

CONSTRUCTION SET-ASIDES, 1963

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

ON S. 757

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

MAY 7, 8, AND 9, 1963

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CONSTRUCTION SET-ASIDES, 1963

TUESDAY, MAY 7, 1963

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

The subcommittee met, pursuant to call, at 10:04 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Sparkman, Neuberger, McIntyre, Simpson, and Dominick.

Senator PROXMIRE. The Small Business Subcommittee will come to order.

Our subcommittee today begins hearings on S. 757. This bill would amend the Small Business Act to exempt Government construction contracts from the SBA set-aside program.

S. 757 is identical to S. 3096 of the 87th Congress, on which the subcommittee held hearings last year.

It is the purpose of these hearings to provide for the record views both for and against S. 757. Since the subcommittee held extensive hearings on this same subject last year, I would like to request those testifying to make their oral statements as brief as possible.

The bill, the agency reports, and a statement by Senator Metcalf who introduced the bill, will go into the record at this point.

(The documents referred to follow:)

88TH CONGRESS
1ST SESSION

S. 757

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1963

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 poten-
6 tial 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

2

1 the following: “, and to insure that full and free competitive
2 bidding by all contractors, on an equal basis, shall be afforded
3 in connection with contracts for maintenance, repair, and
4 construction”.

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

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

21 SEC. 4. (a) In order to maintain present policies and
22 practices of subcontracting to small business firms whose
23 organizations are not large enough to take on the responsi-
24 bility of prime contracts, therefore, contractors having prime
25 Federal construction, maintenance, and repair contracts shall

3

- 1 file annual reports with the Federal agency administering
- 2 such contract, showing the names of any subcontractors
- 3 working under such prime contract and amount of contract
- 4 volume such subcontractor had in the previous year.
- 5 (b) Such reports of subcontracted work shall be made
- 6 annually by the Government agency administering Federal
- 7 prime contractors in construction, maintenance, and repair to
- 8 the Administrator of the Small Business Administration.
- 9 The Administrator shall forward these reports upon receipt
- 10 to appropriate committees of the House of Representatives
- 11 and the United States Senate.

AGENCY REPORTS

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 8, 1963.

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. 757, 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 Small Business Act presently requires that small business enterprises receive a fair share of such contracts. It is our understanding that the Small Business Act does not make mandatory a set-aside program for any area of procurement in which small business receives an adequate share by regular procurement practices. The highway program of this Department, for example, is not under a set-aside program because we have demonstrated that small business now gets a fair share of such contracts. In addition to direct awards, small business participates substantially through subcontracts.

So long as set-asides are not required in those areas of our procurement where small business secures a fair share of contract awards, we are 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 now subject to set-aside, 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.

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 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,

ROBERT E. GILES.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 27, 1963.

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. 757, 88th 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 in chapter 137 of title 10, United States Code, 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 expend 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,

JOHN T. McNAUGHTON.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 30, 1963.

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

DEAR MR. CHAIRMAN: Your letter of February 12, 1963, requested the views of the General Services Administration on S. 757, 88th 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 purposes of the bill are (1) to amend sections 2(a) and 15 of the Small Business Act so as to require full and free competitive bidding on an equal basis by all contractors in connection with maintenance, repair, or construction; (2) to add a congressional finding with respect to subcontracting in the construction industry; and (3) prescribe a reporting requirement with respect to maintenance, repair, or construction contracts.

With respect to the first change, sections 1 and 2 of the bill would eliminate the present authority in the Small Business Act to make set-asides for small business where maintenance, repair, or construction is involved. Since the Small Business Act was originally passed in 1953, the authority contained in the act to set aside procurements for award solely to small business concerns has constituted a major and one of the most effective means of carrying out the policy of Congress that a fair proportion of Government contracts for supplies and services shall be awarded to small business concerns. It is significant that when questions were raised as to whether or not the Small Business Act, as originally enacted, authorized set-asides of maintenance, repair, or construction contracts, Congress subsequently amended the act to clearly indicate its intent that such contracts are to be set aside for small business.

Congress has made it quite clear that, in order to achieve a vigorous, expanding economy, it is necessary to achieve a healthy small business community. To achieve this objective Congress has adopted a strong policy regarding small business and has made this policy equally applicable to all types of small business concerns irrespective of the nature of the product or service which a particular small business concern has to offer. In furtherance of that policy Congress has made the authorities which it has provided in the Small Business Act applicable to both supply and service contracts—including contracts for maintenance, repair, or construction. Any change in the Small Business Act which would make the authorities in the act applicable to one class of small business concerns but not to another clearly would be inequitable and would impair the ability of procuring agencies to comply with the declared policy of Congress.

It is also pertinent to note that President Kennedy has indicated very positively his determination to widen the access of small business to Government contracts and any decrease in those authorities contained in the Small Business Act which

facilitate the access of small business to Government contracts would be, in our opinion, contrary to the objectives of the President.

The experience of the General Services Administration has been that, in general, the set-aside authority in the Small Business Act is helpful with respect to achieving the policy of Congress and the President regarding small business. More specifically, we have found in recent years that, by reason of an increase in the number of construction projects which are beyond the capability of small business concerns, it has become increasingly difficult to insure that small business concerns receive a fair proportion of work involving construction, maintenance, and repair. The availability of the set-aside authority provides invaluable assistance in connection with insuring the award of a fair share of such work to small business firms.

It also has been the experience of the General Services Administration that the small business concerns in the maintenance, repair, and construction industry are very competitive, and that where projects have been set aside for award exclusively to small business concerns competition has been adequate to insure reasonable prices. In addition we have found that the small business concerns bidding on maintenance, repair, and construction set-asides are capable of qualifying as responsible bidders and are competent to meet required standards.

With respect to the other changes, sections 3 and 4 of the bill would modify the present provisions of section 8(d) of the Small Business Act regarding subcontracts, which involve construction, maintenance, or repair by adding (1) a congressional finding that prime contractors in construction, maintenance, or repair, as a matter of practice and policy, generally do subcontract a large percentage of their construction work, and (2) a requirement that prime contractors for construction, maintenance, or repair file certain reports with the Federal agency administering the contract in order to maintain present policies and practices of subcontracting to small business firms.

The effect of sections 3 and 4 of the bill on the Small Business Act is not entirely clear particularly in view of the fact that the finding in section 3 is introduced by the language "all other statutes to the contrary notwithstanding." If the intent is to merely supplement the present provisions of the act, it is our opinion that, in general, these changes would serve little purpose and that, in particular, the reporting requirements would be unduly burdensome when measured in terms of the benefits derived. To the extent that reports are necessary we feel that they should be prescribed on the basis of administrative regulations. The matter of appropriate reporting currently is being reviewed.

On the other hand, if the intent of sections 3 and 4 is to limit the present provisions of the act regarding the establishment of small business subcontracting programs by construction contractors, it is our view that such changes in the Small Business Act would serve no purpose other than to hinder the achievement of the congressional policy regarding the awarding of a fair proportion of Government contracts to small business.

The General Services Administration in cooperation with the Department of Defense and the Small Business Administration has developed a small business subcontracting program as required by the Small Business Act Amendments of 1961. The General Services Administration put this program into effect insofar as civilian agencies are concerned by promulgating appropriate policies and procedures in the Federal Procurement Regulations. These procedures prescribe the use of a small business subcontracting program clause for inclusion in prime contracts and subcontracts for property or services—including maintenance, repair, and construction—as required by the act. The clause is being included in GSA maintenance, repair, and construction contracts as required by the Federal Procurement Regulations. With the exception of a few questions which were raised when the clause was first introduced, we are not aware that contractors have encountered any particular difficulties in operating in accordance with the provisions of the clause.

We feel that the present statutory requirements with respect to small business subcontracting programs is a most necessary and helpful means of achieving the policy of the Congress with respect to small business. We feel that any changes which would preclude the application of this authority to contracts involving maintenance, repair, or construction would militate against the achievement of the congressional policy and would therefore be most undesirable.

GSA is therefore opposed to the enactment of S. 757.

The financial effect of the enactment of this measure cannot be estimated by GSA.

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, *Administrator.*

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

I appreciate the opportunity to state the case for my S. 757. 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 that 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, but at the same time we are anxious to protect the legitimate interests of small businessmen.

As you know, on February 11, 1963, I introduced S. 757 and, at that time, I said that in addition to repealing the small business set-asides in Government construction, my bill would set up a system of reports to the Small Business Administration from prime contractors on Government construction projects. Such reports could be used by the Congress in its continuing effort to improve the operation of the SBA.

Throughout our history, building construction on Government projects has been awarded on the basis of responsive competitive bidding. Without competitive bidding, the specter of political favor, the possible waste of taxpayers' money, and the prospect of inefficient and inadequate work performance will be with us again. In this connection, Mr. Chairman, the record will show that Government witnesses have testified there is an additional cost. However, since competition has been restricted, there is no way of knowing exactly how much this program of set-asides in the construction industry has cost the taxpayers.

One of our best defenses against monopoly in Government construction is the responsive competitive bid. No matter how large or how small a man's business may be, he is not entitled to the job unless he can meet price competition in the construction industry.

It should be noted that small businesses, due to their low overhead costs, are vigorously competitive on jobs within the scope of their capabilities, set-asides notwithstanding. With the exception of missile site construction, the small business segment of this industry, made up as it is of at least 90 percent small business contractors, receives a large percentage of these contracts.

In other small business set-asides, competitive bidding is used to determine the price. After the price has been determined 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.

This has not been the case, however, in the operation of the small business set-aside in Government construction. Competent contractors sometimes are not permitted to bid. The result is that the Government does not always know what a fair price for these set-aside jobs might be.

The set-aside in Government construction also can be harmful to labor-management relations. Contracts in construction are arrived at before jobs are bid and begun. Because of this practice, stable labor relations in the industry depend upon agreements of a continuing nature between unions and established contractors. Construction set-aside, by definition, invites into Government construction, contractors who are nonunion employers. Obviously, with this background, they have no incentive to become part of the labor-management fabric in that industry.

Although the defenders of the construction set-aside insist that small business contractors with Government contracts pay the prevailing wage provided by the Davis-Bacon Act, the fact remains that these set-aside contractors are not required to pay the so-called fringe benefits which exist in most other construction contracts.

In addition to this advantage, Mr. Chairman, the set-aside contractors make very little contribution to the manpower training program of the construction industry. They do not participate in apprenticeship agreements and, therefore, are not carrying their share of this burden.

I believe that Congress should recognize the uniqueness of this industry in small business legislation as it has in the enactment of a number of bills, such as the Taft-Hartley Act, the Hobbs Anti-Racketeering Act, the Wagner Act, the Griffin-Landrum Act, et cetera. There are no giants in this industry. As I have indicated, over 90 percent of them are small by definition of the Small Business Administration. In 1961, construction in the United States amounted to \$77 billion. No single firm did more than 0.5 percent of the total, while in the automobile industry 49 percent of the total business was accomplished by one firm. In the steel industry, 25.7 percent was done by one firm. In the aluminum industry 36.1 percent of the total was accomplished by one firm.

It seems obvious to me, then, that the largest construction firm in the United States in relation to the construction industry is small when we consider the relative size of the dominant firms in other industries.

I believe in the Small Business Administration and the efforts of the Kennedy administration to strengthen this agency. I do not believe, however, that the set-aside procedure should be applied in the building construction industry.

Perhaps the most compelling reason for enactment of my bill is that it would require that the Government have the advantage of genuine open competitive bidding on all construction contracts. There is no other way to get the best price for a construction job. I am told that this is the largest industry in the world and for hundreds of years has depended upon competitive bidding to provide competition. Whenever competitive bidding is diluted in any way, the evil influence of politics, favoritism and graft can become possible. The only protection that all of us have in a construction project is the protection of open competitive bidding.

I appreciate your giving me this opportunity to appear before you in support of my bill and I assure each of you that your consideration of this important problem is deeply appreciated.

Senator PROXMIRE. We are very happy to have the distinguished head of the Small Business Administration, the Administrator, John Horne, appear before us this morning.

Mr. Horne, we have great admiration and respect for the fine job you are doing in the SBA, and you are welcome as always before this subcommittee.

STATEMENT OF JOHN E. HORNE, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION; ACCOMPANIED BY IRVING MANESS, DEPUTY ADMINISTRATOR; THEODORE G. WAALE, DIRECTOR, PROCUREMENT AND TECHNICAL ASSISTANCE DIVISION; PIERRON LEEF, DEPUTY DIRECTOR, FINANCIAL ASSISTANCE DIVISION; AND ROBERT BEBER, STAFF MEMBER, OFFICE OF GENERAL COUNSEL

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

I certainly appreciate being here, sir. And as the chairman has pointed out, S. 757 calls for elimination of Government contracts for construction, maintenance, and repair from the set-aside program of SBA. I shall refer to such contracts by the simple term "construction contracts."

Under the set-aside program, as you all know, suitable Government purchases are reserved for bidding by small business concerns on a competitive basis.

I am, of course, grateful, Mr. Chairman, for the opportunity to discuss the program for construction contract set-asides with you. I hope to clear away some of the misunderstanding underlying this program and to point up how, in my opinion, the enactment of S. 757 would be harmful to the Government and harmful to small construction firms.

At the outset, I should like to point out that no set-aside on construction or any other procurement is initiated by SBA or agreed to by the procuring agency unless there is assurance that the work is within the capability of small concerns and that there are sufficient numbers of qualified small business bidders who can be expected to submit bids. This not only assures competition but that fair and reasonable prices will be paid by the Government.

To a very substantial extent, the prices which the Government will have to pay for construction work in the future depend upon the competition which the leaders of the industry receive from these small construction concerns. Strengthening these firms, and thus facilitating their growth, or at least their continued existence, will serve as a bulwark against unreasonable prices being paid by the Government.

It is important that we keep firmly in mind the fact that approximately 90 percent of the companies in the construction industry are small business concerns. The construction set-aside program is designed to insure for this overwhelming portion of the construction industry an opportunity to obtain a fair share of Government construction contracts.

I also want to emphasize that the procedures as well as the objectives of the set-aside program are no different for construction procurements than they are for any other product or service the Government purchases.

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 want to emphasize that, Mr. Chairman, because we see frequently that opponents of the program ascribe to SBA sole responsibility for the administration of the set-aside program.

Now, Mr. Chairman, in order to comply with your request that we shorten our statements, I had a relatively brief statement on this subject and I shall cooperate further by pointing out here that rather than give the details of the legislative history of the set-aside program I shall simply make one or two points regarding it.

That is, there was at one time some doubt, at least in the minds of some, as to whether or not the set-aside program applied to construction contracts. This question was presented to the General Accounting Office. The Comptroller General's ruling caused additional questions. Subsequently Congress enacted legislation to remove any such doubt.

Congress in 1958 spelled out very succinctly and very clearly that the set-aside program did apply to Federal construction, maintenance, and repair contracts as well as to other procurements.

It might be of interest, Mr. Chairman, for me to jump over now to page 4 and take up near the bottom of the page of my prepared statement.

In fiscal year 1960 the small business share of military construction contracts declined to 50 percent. In an effort to reverse this decline, the Department of Defense and SBA reactivated the set-aside program for construction contracts. The program had been dropped earlier to see what the result would be. The decline of awards to small business was so drastic and so fast that the Defense Department and SBA reactivated it.

But even after this was done, an increase to only 54 percent was achieved in fiscal year 1961, as compared to over 70 percent previously. Moreover, this small increase was only temporary.

Senator PROXMIRE. The previous occasion was in 1958 when you had about 72.8 percent small business procurements on construction contracts?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. At that time there was no set-aside.

Mr. HORNE. Yes, sir. Moreover, this small increase to 54 percent achieved in fiscal year 1961 was temporary. Since then a further decline has occurred. In fiscal 1962 the figure sank to 47.8 percent. For the first half of the current fiscal year, the decline has been even sharper—to 38.4 percent.

The totals change, Mr. Chairman, from month to month, as you know. This figure is for the first half of the current fiscal year.

Thus, the percentage of awards of construction contracts to small firms declined by one-third from fiscal year 1958 (72.8 percent) to 1962 (47.8 percent)—and, as I have indicated, with further decrease a very real possibility in the current fiscal year.

Dollarwise, in 1958, small business awards of construction contracts totaled \$1.1 billion out of \$1.5 billion—while in 1962 the small business share of awards plummeted to \$0.58 billion (i.e., \$580 million) out of a total of \$1.1 billion.

These statistics speak for themselves. In our opinion, without the construction set-aside program, the figures I have cited would doubtless plunge to new lows at an even faster rate. The program is one means of possibly arresting this decline.

The proposal to discontinue it, therefore, is in my opinion most inappropriate. Such a step would be inconsistent with the oft-expressed intent of this committee and of the 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 means to increase the small business share of the procurement dollar.

Without the assistance provided by the construction set-aside program, the competitive potential of small business would, in my opinion, be seriously weakened.

In my judgment, much of the opposition to the program as reflected in S. 757, is based upon misunderstanding.

A number of assertions have been made which reflect surprising misconception of our set-aside procedures. I should like to review some of the major misconceptions and demonstrate their inconsistency. I hope that such clarification will have a persuasive effect on those who are now urging the discontinuance of construction set-asides.

Perhaps the most common misunderstanding is that all construction contracts between \$2,500 and \$500,000 are automatically set-aside for

small business. It is suggested that procurement officials have been deprived of discretion with respect to such contracts. 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 action 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. This action had to be repeated even when the same items were purchased recurrently and there had been no change in the conditions which justified the original set-aside.

To avoid such duplication, 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.

Now, where the criteria are generally applicable to 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. This is very much in keeping with what we are constantly urged to do by the Bureau of the Budget to get the maximum result out of the minimum number of employees and, consequently, the minimum expense to the Government.

In no respect does this affect the right of procurement officials to reject a recommendation. They can and do call our attention to those contracts in which the particular facts would not, in their opinion, 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. All SBA can do in such cases is to appeal. The final authority is in the procuring agency.

Application of this procedure to construction contracts is merely an extension of the class recommendations we had made in other procurements for items such as adhesives, ready-mix asphalt, boxes and crates, cement, various types of containers, and for services such as dry-cleaning, janitorial, guard and watchman services.

As experience was gained in the field of construction, it became apparent that the class set-aside procedures were 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 last year 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 to ask: Has there been any study since then? This is the one you gave us last year too, is it not? Has there been any study since 1962, since last year?

Mr. HORNE. No, sir.

Senator PROXMIRE. This is the latest analysis you have?

Mr. HORNE. Yes, sir. This is the same information we gave last year, Mr. Chairman. This was made by the Department of Defense. I do not think the Department of Defense has made another study. I think they would have called it to our attention if they had.

I could very well check that out for you if you want me to. I would be glad to do so.

Senator PROXMIRE. I wish you would.

Mr. HORNE. All right.

(The following information was supplied:)

In testimony before the subcommittee on May 8, 1963, Mr. Graeme C. Bannerman, Deputy Assistant Secretary of Defense, (Procurement) (Installations and Logistics), referred to a study of 11,251 military construction contracts over \$10,000 awarded during a 19-month period between July 1961 through January 1963. This study indicated that 10,636 contracts were under \$500,000 of which 8,340 were set aside for small business. Thus, the difference, 2,296 procurements, or 21.6 percent, were not set aside for small business, compared to 20 percent during the first half of calendar year 1961.

Mr. HORNE. It has been alleged also that many small firms obtaining contracts under the construction set-aside program are incompetents financed by SBA. Statistical information on SBA construction loans does not distinguish 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 slightly 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 losses. Many of the delinquent loans are in the 30- to 90-day category and frequently are cured.

Here again, Mr. Chairman, in order to save the committee some time, I might simply point out that the information I supply in the next page or so is also that which I supplied last year. It simply is evidence of the fact that in the construction industry anybody that is lending money is likely to experience a slightly higher loss in the construction industry than would be the case in other industries.

But so far as the final loss to the Government is concerned, I want to point out that we generally take collateral and other means of securing our loans and the total loss to the Government on loans that may have gone bad is as pointed out on page 10, as follows:

In relation to the money disbursed, the loss in the construction industry—that is, of our loans here—is 1.7 percent 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.

The fact that a loan, as I have said already, may be delinquent does not mean that it will necessarily result in a loss. If the delinquency is not cured and liquidation ensues, 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 June 30, 1962.

I question 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 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, as this committee knows, that SBA can certify as to the capacity and credit of a low bidding small firm (whether or not a set-aside is involved) by issuing a certificate of competency. We have done so since 1953 in the case of some 30 construction contracts. Only one of the contracts involved in these certifications has been terminated for default. This can hardly be reconciled with the charge that we are careless about exercising our authority on competence and determining competence.

Another misunderstanding relates to the claim that construction set-asides result in additional costs to the Government. I do have some information in reply to this that bears on this point, Mr. Chairman, that I did not have when I appeared before your committee last time. Some of it is repetition of what I said last time.

To my knowledge, there is no positive evidence to support this view—and responsible procurement officials have repeatedly so stated. 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 re-advertised in open competition.

In this connection, I would point out that Government engineers devising the technical specifications for a construction contract prepare an advance estimate of the costs involved. This estimate is required by regulation in the case of construction contracts which are expected to cost more than \$10,000. The estimate is kept secret until the bids are opened and 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.

Of course, too, Mr. Chairman, the contracting officer has had experience either from his work or has access to similar experiences where similar contracts have been let in the past. And in addition to the estimate they have guidelines, in most cases, which they can use in determining whether or not the price is a reasonable and a fair price.

Much has been made of the fact that large concerns occasionally submit bids on construction set-asides 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 has been pointed out in the past by the Department of Defense. In most cases the contractors submitting such bids know that they cannot be accepted. These ineligible large

firms are thus free to bid even at a loss in order to discredit the bids offered by small firms which are bound by the prices they quote.

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, in its report (No. 2175) of August 10, 1962, on the military construction appropriations bill, 1963 (H.R. 12870), the House Committee on Appropriations, in discussing the construction set-aside program, concluded:

The small business set-aside program in the military construction field has been a matter of some controversy and discussion. The nature of the military construction program places maximum emphasis upon formally advertised competitive procurement. This method of contracting assures the Government of the lowest responsible bid. The administration of the set-aside program has followed this type of contracting with the exception of the elimination of non-qualified contractors. This has had the effect of eliminating bids from large prime contractors and at the same time undoubtedly has caused a large degree of participation by small business contractors. It has proven virtually impossible to ascertain whether or not small business set-asides have resulted in payments of price differentials * * *.

In a 1962 study of the entire set-aside program conducted by the White House Committee on Small Business (which is comprised of representatives of the White House staff, the Council of Economic Advisers, the Bureau of the Budget, the 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" affirmed 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.

The possibility of increased cost of set-asides was raised as recently as March 29 in hearings on military procurement before the Defense Procurement Subcommittee of the Joint Economic Committee. At that time the Comptroller General, when asked whether the set-aside program has been costly to the taxpayers, replied, "We don't know of any case."

Nor is there substance to the complaint made against construction set-asides that small firms which receive the awards subcontract an excessive amount. As is acknowledged in section 3 of S. 757, in the construction industry a prime contractor rarely handles the whole project himself. There is no reason to believe that small construc-

tion firms subcontract a greater percentage 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 just as much recognition.

I might add that antibrokerage regulations are designed to prevent excessive subcontracting. DOD directives, for example, require construction contractors to actually perform at least 20 percent of the contract.

Mr. Chairman, I notice in reading the hearings that were held last year by this committee that some of the people who appeared before your committee objected to the set-aside program on the basis they were excluded from bidding because of their size.

Senator PROXMIRE. They were what?

Mr. HORNE. They were excluded from bidding because of their size. Well, of course, this is true not only in the construction industry but it is true in all set-aside programs. We have to draw a line somewhere as to what is large and what is small regardless of what the industry is.

The only way we could possibly remove all controversy relating to size or to somebody being excluded from bidding on a set-aside because under our standards he is large is to accept the definition which I wish we could accept—and I say this somewhat facetiously—and that is that anybody who has a larger competitor is a small business.

I say this is the only way we could possibly eliminate controversy that may arise from time to time in applying our size standards. But we have no choice under our legislation, if we are going to abide by the law that Congress passed, except to apply size standards.

The difficulty, of course, comes in satisfying everybody. Because, I repeat, wherever you draw the line there is going to be somebody above that line.

Now, as I pointed out last year, and as I believe you remember, we did about a year ago increase our size standard in the construction industry. Until that time our standard was an average of \$5 million for a period of 3 years. It is now \$7.5 million for a period of 3 years.

But there is no possible way—

Senator PROXMIRE. When you say, "We had an average of \$5 million for a period of 3 years," you are talking about the gross business done by the firm?

Mr. HORNE. Yes, sir. Now it is \$7.5 million.

Senator PROXMIRE. Precisely how do you define it? What is the definition?

Mr. HORNE. Well, any construction firm which, for a period of 3 years had annual receipts exceeding an average of \$7.5 million would be considered large.

Senator PROXMIRE. Each year?

Mr. HORNE. Each year.

Senator PROXMIRE. Of gross business?

Mr. HORNE. Yes, sir. It would be considered large. That is, an average over a 3-year period.

Senator PROXMIRE. It can exceed it in 1 year but the average has to be below?

Mr. HORNE. Yes, sir. That is right. But there is no way in the world, either in the set-aside program or the lending operations or

the awarding of contracts or any other matter having to do with the SBA operations, that we can satisfy everybody on the size question. It just is not possible to do it. because you have to draw a line at some place, and wherever you draw the line the man who is outside that line is sometimes unhappy about it.

There have also been intimations that SBA programs are antiunion. Now, there is absolutely no basis for this, Mr. Chairman.

Our programs are designed to assist small business concerns. Some small construction firms are unionized; some are not. The same is true of large construction firms.

I have something here I wanted to read, Mr. Chairman, in addition to what is on this page. If I may, I will go through it as briefly as I can.

In testifying on June 8, 1962 before a subcommittee of the House Committee on Education and Labor, Mr. Kenneth Lewis, executive secretary of the Master Builders of Iowa, a local chapter of the Associated General Contractors, said:

Our membership is comprised of about equal numbers of unions, and open-shop members.

Mr. William J. Rosenthal, replying on behalf of the Associated Builders & Contractors, Inc., Baltimore, a construction industry trade association composed of 1,023 contractors of Maryland, Virginia, West Virginia, Pennsylvania, Delaware and Massachusetts, said:

The great majority of our members work on a so-called open-shop basis.

Certainly these statements confirm something we all know—that it is baseless to assume that the SBA discriminates against unions by encouraging small construction concerns to obtain Government contracts.

I would also refer to the letter dated June 13, 1962 sent by Mr. Paul A. Askew, assistant to the general president, International Union of Operating Engineers, to you, Mr. Chairman.

In this letter Mr. Askew stated:

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.

Just about a third, a little less than one-third of the total of this area.

At least half of small business contractors do not have signed agreements with the union.

“At least half.” This would mean half did have.

At least 75 percent of large contracts was subcontracted to others by the large contractors.

That is the end of the quote.

Mr. Askew concluded by saying that because “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 be pointed out, Mr. Chairman, that one-half of the 14 contracts set aside, as I have just said, were received by union concerns. That is, the small ones.

SENATOR PROXMIRE. Is that a fact, or are you construing that?

MR. HORNE. I am quoting from his letter.

Senator PROXMIRE. Mr. Askew did not say one-half. He said at least one-half.

Mr. HORNE. I am assuming that if half of them were non-unionized—

Senator PROXMIRE. He did not say one-half were nonunion.

Mr. HORNE. That is true.

Senator PROXMIRE. He did not say that. He said at least half were nonunion. That means you could have had 60 or 70 or 80 percent. He said "at least." He did not say precisely how many were non-union.

Mr. HORNE. Well, Mr. Chairman—

Senator PROXMIRE. He said more than 50 percent and did not draw the line above it. Is that not correct? I do not have the document in front of me.

Mr. HORNE. Let me read it again. This is his quote:

Fourteen set aside for small business aggregating \$3¼ million. At least half of small business contractors do not have signed agreements with the union.

Senator PROXMIRE. Does that mean that half do have? I do not think you can necessarily draw that conclusion. It may be true.

Mr. HORNE. I say I am simply assuming if half were unionized half were not.

Senator PROXMIRE. He did not say that.

Mr. HORNE. I know he did not. I am not saying he did.

Senator PROXMIRE. Well, I think we have made our point.

Mr. MANESS. Mr. Chairman, if I may, he continues in the next sentence, and I am quoting from page 48 of last year's hearings, and I am quoting from the letter of Mr. Askew to the chairman of this committee last year. He follows in the next sentence and says:

As a matter of fact, the Corps of Engineers advises me that exactly half of the contracts awarded were given to nonunion contractors.

Senator PROXMIRE. Very good.

Mr. MANESS. So, on that assumption we are fair to say half were union and half nonunion.

Senator SPARKMAN. And if not more than half of the non-set-aside were nonunion—

Mr. HORNE. That would be true.

Senator SPARKMAN. In other words, it had to swing on one side in one group or the other.

Mr. HORNE. That is true, sir.

I do not want to put words, of course, in Mr. Askew's mouth, Mr. Chairman, but I think it is fair to assume, based on the last sentence that I read to you, that the point Mr. Askew is making in his letter is that one reason at least that he opposes the set-aside is because some nonunion, small contractors get some Government construction contracts.

Obviously, he desires, if I am interpreting his remark correctly, to compel all Government construction contracts to be awarded to union firms.

I want to make two points. I am not saying that Mr. Askew is wrong or right in what he wants, but I do want to make two points in connection with this:

First, doing away with construction set-asides will not achieve these goals. Last year, for example, Mr. Bannerman, Deputy Assistant

Secretary of Defense, testifying as a spokesman for the Defense Department, informed Subcommittee No. 2 of the House Committee on Banking and Currency:

* * * I think the fact is that there have been a number of contractors, some small and some nonunion. If we are not to rule out awards to small businesses at locations of that kind and to rule out awards, perhaps, to nonunion firms—which we have no authority to rule out now—this problem would continue regardless of the set-aside procedure.

As regards his contention, Mr. Askew's contention, that elimination of set-asides will result in the upgrading of wages to the union wage scales, I do not at all agree that such would be the case.

Anyhow it seems to me that if Congress should decide that remedy in this area is warranted, it should be achieved through amendment of the Davis-Bacon Act, as is now under consideration by the House Labor and Education Committee.

I repeat, Mr. Chairman, that neither of Mr. Askew's goals, the granting of Government contracts only to unionized companies nor the upgrading of wages, can be accomplished by abolition of the military construction set-aside program.

We never query a small concern as to whether it operates under a union contract, nor do we involve ourselves in this area in any way. These are matters within the responsibility of other agencies of Government.

The appropriate procedure for any labor union which may have a grievance against undesirable wage or other labor practices of some construction concern—and the records of the Department of Defense and the Department of Labor will undoubtedly demonstrate that inappropriate practices are not confined to small businesses—is to seek to eliminate these undesirable practices. Discrimination against small business through destruction of the set-aside program, one of few means whereby small construction concerns, including those employing union labor, can participate in Government work, is not the solution. This would injure all small firms.

And here again, Mr. Chairman, I want to call to the attention of the committee a couple of things that have come to my attention since the preparation of this testimony.

First, a resolution by the Oregon State Building Trades Council, a resolution of recent weeks. It was sent to me on April 15 and if I may, sir, I would like to read the resolution.

Senator PROXMIRE. All right.

Mr. HORNE (reading):

Whereas there has been controversy arising in the construction industry relative to the Small Business Administration set-asides program; and

Whereas there have been problems affecting the construction industry within this program which has caused the construction industry to question the advisability of the set-asides program; and

Whereas when these problems were brought to the attention of the Small Business Administrator, John Horne, he offered his cooperation and has taken steps to alleviate these problems; and

Whereas the Oregon State Building Trades Council supports the principle of the Small Business Administration in protecting the legitimate small businessman: Now, therefore, be it

Resolved, That the Oregon State Building Trades Council supports the set-aside program in the construction industry and offers the support to Administrator John Horne.

Senator PROXMIRE. Is that the Oregon State Building Trades Council?

Mr. HORNE. Yes, sir; the Oregon State Building Trades Council.

The second point I should like to bring to the committee's attention, Mr. Chairman—and I will leave this, not read it but leave it with the committee—is a statement by Mr. C. D. Brownell, president of the National Association of Plumbing, Heating & Air Conditioning Contractors, made in April 1963. I would just like to read his last two sentences.

In conclusion, the basic philosophy of SBA is to enable small construction contractors to participate equitably in the Government's construction business, without sacrifice of the primary objective of high quality at reasonable cost. Experience proves that the small contractor's share of Government construction work would be inequitably reduced if authority to make small business set-asides were not available.

(Mr. Brownell's full statement appears on p. 169.)

In conclusion, I want to emphasize that construction contracts are by no means the only issue involved in this legislation. Exemption of the construction industry from the set-aside program could, and I think 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. In such cases, irreparable harm would be suffered by the small business sector of the economy and I believe by the economy generally.

Unquestionably, this threat to the set-aside program would be considered by small business generally as a discriminatory and unfriendly act. The only way to prevent such unfortunate developments is to stand firm now against this attempt to deprive small construction firms of the benefits of the program.

Last year, Mr. Chairman, we submitted to the committee what we call a position paper. You were kind enough to include that in your printed hearings. We have revised and brought the position paper up to date, as of March 22, 1963, and I should like to leave it for the committee, for whatever disposition you care to make of it, sir.

(The "position paper" mentioned appears on p. 212.)

Senator PROXMIRE. Very good. Thank you.

Mr. HORNE. 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. 757 calling for the discontinuance of such set-asides.

Mr. Chairman, at the beginning I failed to point out who was with me at the table.

Senator PROXMIRE. I was going to ask you to identify the name and title of each of the four gentlemen accompanying you.

Mr. HORNE. Mr. Robert Beber is to my right. He is a staff member of the General Counsel's office.

To my immediate left is Mr. Irving Maness, Deputy Administrator for Procurement and Technical Assistance.

To his left is Mr. Ted Waale, long time with the Corps of Engineers, who knows this program, technically speaking, quite well, who has been with SBA for several years and who is director of this program under Mr. Maness' direct supervision.

And to his left is Mr. Pierron Leef, who is one of our most experienced financial specialists working in the field of financial assistance program. He is deputy director of the program.

Senator PROXMIRE. I would like to ask a few questions before I yield to my colleagues.

I am sure that everybody in this room, certainly everybody on the committee, wants small business to do well and to do better than it has done. There is no quarrel about our objective. And we want to do what we can certainly to legitimately and properly, consistent with other goals, encourage small business to take a greater part in the procurement operation which represents so much of our total business opportunities in America.

Now, what amount and what proportion of all construction contracts are now set aside? First, how big is the total construction contract set-aside, and what proportion is this of all construction contracts?

Mr. HORNE. I believe Mr. Waale may have additional information on this, but I am looking for the reference that I made to it. Fiscal year 1962 I believe is the last figure I had, and out of \$1.1 billion about \$580 million was awarded to small business.

Senator PROXMIRE. That is not the question I asked.

Mr. HORNE. I misunderstood you then, sir. I am sorry.

Senator PROXMIRE. I asked first how big is the total construction contract procurement. Is \$1.1 billion the total amount?

Mr. HORNE. Yes, sir; of military procurement.

Senator PROXMIRE. The second question was a little different, because I assume small business is getting some of the business that is not set aside, or do they get zero of the amount that has not been set aside? We should have the amount firms have been able to get through the set-aside and also the amount they have been able to get of the business that has not been set aside but is available for every contractor to make bids on.

Mr. HORNE. I do not have that figure, Mr. Chairman. I think we can get it from the Department of Defense for you.

Senator PROXMIRE. It seems to me that is a very significant figure, in view of the fact that, as you have testified, in 1958, when there was no set-aside at all, small business was getting—and that was a definition that was even smaller, \$5 million—72.8 percent or 72.6 percent of all construction work.

Mr. HORNE. Mr. Chairman, I agree with you this is a good point. I should know this but I frankly do not know. I think that the figures I have given you are based on the overall. I do not think they are tied down completely just to the set-aside program.

Senator PROXMIRE. All right.

Mr. HORNE. I will get this.

Senator PROXMIRE. Do you also have separately the amount set aside for small business?

Mr. HORNE. If we do not have it here, Mr. Chairman, I will get it for you and supply it for the record.

(The following material was later supplied.)

In response to questions regarding how much the Government is spending for construction and the relation of total Federal construction to small business set-asides, the following information has been furnished: According to the Department of Commerce, Federal and federally financed construction in fiscal year

1962 amounted to \$18.1 billion. (See U.S. Department of Commerce, "Construction Review," vol. 9, No. 2, February 1963, p. 2.) The Department of Commerce report does not divide this figure as between Federal construction and federally financed construction. No comparable figures are available on set-asides for total Federal construction. However, we estimate that total small business set-asides during the same period for Federal construction would not exceed one-half of a billion dollars.

Senator PROXMIRE. Obviously, this is not doing the job, is it? Obviously, when you have the situation in which 90 percent of the firms are classified as small—and I suppose more now because you have a larger category for small business—\$7.5 million instead of \$5 million—and they did get more than 70 percent back in 1958 without a set-aside, this crutch, which has its merits but does limit competition, is not working.

Mr. HORNE. Well, Mr. Chairman, there are two points I would like to make in respect to that, sir. Let's take your latter point first.

It limits competition to the extent that the large firms cannot give a responsive bid.

Senator PROXMIRE. That is right.

Mr. HORNE. But it also increases competition to the extent that the small firms are much more likely to come in. And the Defense Department people and we people who have experience in this field are in general agreement with this. They are more likely to come in and bid where it is set aside. So we increase competition by the set-aside program too.

Senator PROXMIRE. There is something here that has not been explained at all, and it should be clarified. Back in 1958, when there was no set-aside program, small business firms were taking part and getting the business. Now, when there is a set-aside program, they are not getting the business.

Now, No. 1, what is the difference? And, No. 2, is there not something else that should be done perhaps—subdividing these contracts—so that you could have a greater participation by small business?

It seems to me there must be a different method of procurement now or else some vast change in our procurement which has disqualified or prevented or knocked out small business from taking part in this procurement.

Mr. HORNE. Mr. Chairman, there is no question but what there is a different mix. And this is a factor.

I think it should also be pointed out—and I admit quite frankly—that the set-aside program is not a perfect solution either in the construction industry or in any other purchase done by the Government. My point is, though, it is at least a vehicle we can use and are using fairly effectively to enable the small businessman to get a larger share of what the Government is buying than otherwise he would get.

I think without a set-aside program either here or in other industries that the amount going to small business would be a great deal lower than it is.

I realize that the chairman—

Senator PROXMIRE. That is an assertion, but the assertion seems to be contradicted by the facts. When we have the small business set-aside program, they get less.

Now, it seems to me, that, of course, you can argue that they perhaps would not do as well, and maybe that is true.

But I think that somehow the Small Business Administration should concern itself and perhaps recommend a program where we could explore the possibilities with Defense and Space and these other procuring agencies as to how contracts could be so subdivided or so organized or so proposed that the small businesses can get a bigger share without just knocking out a large part of your most efficient contractors who would like to come in and make a bid and perhaps could do the job more efficiently and at a lower cost to the taxpayer.

Mr. HORNE. Of course, they are not being knocked out, Mr. Chairman.

Senator PROXMIRE. They are being knocked out of everything set aside.

Mr. HORNE. They cannot bid on it. Neither can the man who manufactures coats or manufactures something else bid on the set-aside.

Senator PROXMIRE. I do not want to keep my colleagues from questioning you too long, but let me ask if it is not true that construction is a different kind of business. No. 1, there is an easy access—much easier than manufacturing.

The number of contractors in America is very great. Competition is enormously intense. The margin of profit is very low. All these things suggest that it is not necessary artificially for the Congress of the United States to provide rules for procurement to keep business alive. You are going to get people going into construction anyway.

In the private enterprise sector of our economy the small contractors are competing very vigorously. There is no indication their numbers are diminishing, although they do not have any set-aside like this.

So you do not have the kind of situation which I think maybe we can justify in some small manufacturing field where otherwise small business will dry up or drop out.

This is an area of easy access, where relatively modest capital is required and where skill and flexibility, and so forth, have a high premium, so small business can get into it and compete and compete well.

Therefore, I think you can make some argument that maybe we should consider knocking out this prohibition of larger business from bidding.

Mr. HORNE. This, of course, Mr. Chairman, is a point of view that frequently is expressed. I do not see, in working in this field, that there are any basic differences between the procedures and the principles involved here and the case in other areas of set-aside programs.

Mr. MANESS had one point he would like to make, sir.

Mr. MANESS. Mr. Chairman, as you indicated, there is a difficulty in the construction industry to break large procurements out into smaller contracts because of the question of economic feasibility of breakouts.

However, if you do away with the construction set-aside, we are doing away with that one arm which guarantees a proportion, at least, for the efficient small business concern which must get the same bonding, which must do the same work, which must meet all contract requirements.

The proof of the pudding here is our COC program—the certificates of competency. We find that of 30 certificates granted only 1 company

defaulted. This means our average is fairly high and that only efficient small business concerns are competing.

It also guarantees in this case, if we did away with the set-aside, that because of the difficulties and because of the fighting and the competitive effort of the large concerns, they would drive out the small concern. The small concern, the local small concern, would not even enter a bid or submit a bid or propose a bid because of the cost if it did not have the opportunity of getting the award.

Senator PROXMIRE. Well, I just wonder if there would be this tendency in this particular industry to drive the competitor out. In retailing you would do it, because if you are frozen to a specific location you drive one competitor out of it, whether it is gasoline or whether it is merchandising, and then you can take that whole market for yourself. This is not true in construction contracting where there is a much greater degree of mobility, where you can have people who can be located, even small business, in one State and compete in another, or in one town and compete in one much farther away.

Mr. MANESS. That is true of the large construction concern which has the mobility and the flexibility. It is not true of the small concern which must confine itself to a smaller geographical area. It does not have the number of supervisors or the amount of equipment.

Senator PROXMIRE. All I am saying is I think it may be farfetched and unusual to conceive of a big contractor saying, "I am going to go in and knock out some of these small business people by bidding below my cost."

I can see how he might do that under a retail circumstance.

But here, because the big contractor is mobile and does look at his operation on a national basis, I cannot imagine him saying, "I am going to go into Wisconsin or I am going to go into Oregon and New Hampshire and knock out these small contractors."

I cannot imagine anybody with that negative attitude, and I do not think that is the way they would think. I do not think they would be in business long if they did that.

Mr. MANESS. Apparently they have that attitude. And I do not know if it is negative or affirmative, sir. But they are knocking out the small fellow.

Bear in mind, as you have indicated, in 1958 the 72 percent existed. But then with the change, with the large missile base type of construction contracts, if we did not have the set-aside how much less a percentage would have gone to small business.

The Department of Defense and the GSA, which are in this business, agree with us that they must retain the set-aside program to protect the small fellow.

Mr. HORNE. And to get the most competition in the industry.

Senator PROXMIRE. I have two more quick questions and I will yield. Last year we had a \$5 million limit. Now we have a \$7.5 million limit.

Mr. HORNE. Yes.

Senator PROXMIRE. Has there been any change, any improvement on the basis of this increase during the past year from \$5 to \$7.5 million, qualifying I imagine substantially more contractors?

Mr. HORNE. I think we could only say this: Based on the first 6 months of fiscal 1963, the figures that I gave you, we have not by the

increase in size increased dollarwise or even percentage-wise the amount going to small business.

By the same interpretation, I think we could properly assume that had we not increased our size standards we would even have a lesser figure going to small business.

Senator PROXMIRE. It depends. I still look at this thing as failing. It is not working. It is a method by which small business is getting less and less. But when you say if we did not have this thing we would be even worse off, I am wondering if we do not need a more fundamental approach to procurement and trying to get something that will work.

Mr. HORNE. We may, and we are searching for it, as you know, constantly. My point is this, and I keep saying this even though I am repeating myself: Presently the most effective way we have provided by Congress to enable the small businessman to be certain at least of some share in what the Government is buying through the set-aside program, not only in construction but through other procurements.

Now, there may be a better way to do it than the set-aside program. We have not found a better way yet. We are, and I know you are, continuing to explore ways to improve this thing.

But my point is we do have something helpful. Why abolish this until at least we have found a better way to do it, if there is a better way?

Mr. MANESS. Mr. Chairman, we are continually stressing with the Department of Defense and the top officials making as much breakout as possible, to break out contracts which can be economically feasible.

There is a problem of economics in whether you can break a contract into several runs or several portions so it can be economic.

We are continually pressing for this to be done.

Senator PROXMIRE. Are you satisfied with the job they are doing?

Mr. MANESS. I am satisfied that the top echelon is cooperating with us. And we are continually after them to have it trickle down to the contracting officers. We are implementing every program we can. Where we find some difficulty, we are in consultation. And we are changing the basic policies and the basic regulations continually.

Senator PROXMIRE. Mr. Maness, would you and Mr. Horne write this subcommittee a letter setting forth exactly what success you have had trying to persuade the various procurement agencies to do this, what difficulties you have had, what you think the prospects are for reaching some kind of better arrangement? In other words, give us a complete story as briefly as you can on this.

Mr. MANESS. Mr. Chairman, there is a letter on my desk, which I would have signed this morning had I not come here, which addresses itself partially to this problem.

Senator PROXMIRE. Let's get one that addresses itself fully and completely.

Mr. MANESS. I will do that this afternoon, sir.

(The requested information follows:)

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., May 7, 1963.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: This is in reply to the request of Reginald Barnes, Esq., for information regarding the progress of the small business subcontracting program.

Since enactment of Public Law 87-305 (Sept. 26, 1961), a number of important steps have been taken by the cognizant Government agencies and major prime contractors. In general, these steps set the stage for actions which the Small Business Administration (SBA) hopes will increase the subcontracting payments to small business.

The present trend is reflected in reports issued by the Department of Defense (DOD) which, in turn, are based on prime contractor reports to the DOD. They show that for the first half of the current fiscal year (1963) payments to small firms amounted to \$2,165 million—an increase of \$293 million over the \$1,872 million in the corresponding fiscal year 1962 period. When these payments to small firms are related to the total contract receipts by business firms, it appears that the participation of small business firms has increased from 15.7 percent during the first half of fiscal year 1962 to 17 percent during the same period of the current fiscal year, whereas reports for the first 8 months of the current fiscal year show that the participation of small firms has declined again to 16.7 percent.

In appraising these statistics, it is important to note that an apparent increase of 1 percent does not, necessarily indicate reversal of the previous subcontracting downward trend. They may, in our opinion, merely constitute the result of the new statute's reporting provisions. In any event, they do not warrant a conclusion that the former downward trend has, as yet, been reversed. This, however, is not to say that the new statute will not be effective. I merely suggest that insufficient time has, as yet, elapsed to make the provisions of Public Law 87-305 fully operative. Although the statute was enacted on September 26, 1961, the implementing regulations were not issued by the cognizant agencies until early 1962 and necessary personnel allocations did not take place, due to known appropriation limitations, until some time later. Operative difficulties were also encountered as a result of conflicting interpretations regarding the relationship between the subcontracting functions entrusted by the Small Business Act to the SBA only (S(b) (5)), and those to be exercised jointly by the SBA and DOD (S(b) (1) (B)). These have now been clarified by agreement between SBA and DOD (see enclosures) whereby DOD undertook to request its prime contractors to cooperate with the SBA by voluntarily extending the SBA small business source-finding program to procurements not now covered by DOD-prime contractor agreements.

Another problem, along the same lines, arose from the DOD, GSA, and SBA agreement which, in effect, exempts contracts in excess of \$10,000 from the SBA source-finding program, unless specifically agreed to by the contracting officer. The discussions with DOD have resolved this problem, too, and appropriate implementing regulations are now in the process of being negotiated and prepared by the agencies concerned.

Not to be overlooked among the problems encountered is the difficulty of inducing prime contractors to give proper weight to the small business program in relation to other meritorious aspects of procurement, which are also currently being emphasized. These include product quality, cost reduction, aiding surplus labor areas, standardization of parts and equipment, proprietary rights, reduction of sole-source procurement, increasing competition, improvement of contract management, incentive contracting, reduction of maintenance costs, etc. In many instances the small business subcontracting program is, thus, subject to diffusion or subordinate to one or more of the other above-mentioned objectives.

The foregoing generally summarizes the major problems which have arisen and the solutions adopted in launching the small business subcontracting program. A substantial beginning has been made. The program is well underway and we have justified expectations that our next report will justify our present

optimism. Your interest, however, and that of the committee in the continuing progress of this essential program is vital to its success and helpful to this agency.

With kindness regards, I am,

Sincerely yours,

IRVING MANESS,
Deputy Administrator.

ATTACHMENT 1

ASSISTANT SECRETARY OF DEFENSE,
INSTALLATIONS AND LOGISTICS,
Washington, D.C., March 23, 1963.

Hon. JOHN E. HORNE,
Administrator, Small Business Administration

DEAR JOHN: The military departments have recently reported that they are encountering problems in contract administration apparently stemming from instructions contained in a new subcontracting handbook published by the Small Business Administration. The confusion results from visits currently being made by SBA regional office representatives to the plants of Defense prime contractors for the purpose of reviewing purchase orders issued by these primes.

The SBA handbook contains instructions to regional offices to develop voluntary supplemental programs with prime contractors under which they would receive suggested new subcontracting sources directly from the SBA. We understand these new arrangements contemplate monthly reviews by SBA representatives of the prime contractors' purchase orders and monthly reports will be rendered to Washington apprising your office of the attitude of the contractors' personnel concerning the small business program.

Obviously, Defense prime contractors are not prepared for this new activity by SBA because their contracts do not provide for it. Similarly, there is a lack of understanding on the part of the local military contract administrators who have been called upon by the SBA to cooperate in this effort. As you know they are guided by the current small business subcontracting provisions of ASPR which were coordinated with your Administration but which do not cover these new activities.

We certainly share the objectives of the SBA in desiring all Government purchasing agencies to conduct effective small business subcontracting programs. However, it has been assumed that the small business subcontracting program as jointly developed by SBA, GSA, and DOD which resulted in the current ASPR and FPR embraced all of the provisions of Public Law 87-305. Yet the SBA subcontracting handbook appears to go beyond our cooperatively developed program and establishes on a unilateral basis a separate subcontracting program which would operate substantially outside the framework of the Government's procurement contracts.

Last December SBA wrote to about 20 defense prime contractors suggesting a similar voluntary program. The letter stated that SBA was " * * * hopeful that prime contractors will not strictly adhere * * * " to their contracts and would request assistance of the SBA in locating qualified small business firms on all types and dollar amounts of purchase orders issued to vendors and subcontractors. That letter also suggested SBA would review prime contractors on a monthly basis.

After several prime contractors brought these letters to the attention of the military departments we conferred with SBA and were assured that all subsequent activities in the subcontracting area would be coordinated with the DOD as was contemplated by our joint agreements. The handbook now formally establishes, on a Government-wide basis, the objectionable features of the program set forth in the December letters.

Under these circumstances since the subcontracting handbook is the basis of the problem we recommend that the SBA regional offices be instructed to defer any extension of their subcontracting activities until a better understanding is worked out between our offices of the role which the procurement agencies are going to be responsible for in the administration of these procurement contracts and in the conduct of the Government's small business subcontracting program.

Sincerely,

THOMAS D. MORRIS,
Assistant Secretary of Defense, Installations and Logistics.

ATTACHMENT 2

APRIL 4, 1963.

Hon. THOMAS D. MORRIS,
Assistant Secretary of Defense, Installations and Logistics,
Washington, D.C.

DEAR TOM: Your letter of March 23, 1963, notes some questions concerning the subcontracting handbook which we have prepared for the use of our field personnel. It is regrettable that this internal Small Business Administration handbook has caused misunderstanding within the Department of Defense, the confusion stemming from the apparent misinterpretation of SBA's legal responsibilities and authority as contained in the Small Business Act.

With regard to subcontracting, the Small Business Act places three distinct responsibilities upon designated Government agencies. Two of these responsibilities are placed upon SBA alone. The third is placed jointly upon the Department of Defense, the General Services Administration, and SBA.

As regards the responsibilities placed by the statute upon SBA alone, section 8(b) provides that it "shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small business concerns at prices and on conditions and terms which are fair and equitable."

In addition, SBA is required by section 8(d) (3) to include in its annual reports, filed pursuant to section 10(b), "information, and such recommendations as it may deem appropriate, with respect to the administration of the small business subcontracting program" established jointly by DOD, GSA, and SBA under section 8(d).

Separate and distinct from these two sole SBA responsibilities is the responsibility imposed jointly upon DOD, GSA, and SBA to develop cooperatively a subcontracting program, mandatory upon certain prime and subcontractors, which shall contain, among other things, appropriate provisions to "insure that such prime contractors and subcontractors will consult through the appropriate procuring agency with the Administration [i.e. SBA] when requested by the Administration" (sec. 8(d) (1) (B)).

In line with the "information-gathering and encouragement" responsibilities imposed upon SBA by section 8(b) (5), we have undertaken to receive information concerning methods and practices of letting subcontracts from those concerns, including prices, terms and conditions on which they are let, and on which they are willing to furnish voluntarily the information to us. We also will make periodic reviews of the subcontract requirements of any concerns that will voluntarily permit us to do so, with a view toward assisting them in locating qualified small business suppliers. These activities will apply to all concerns and not solely to those concerns which are subject to the mandatory subcontracting program established under section 8(d) (1).

Your objection to our effort mentioned in our December 20, 1962, letter, appears to be based on the grounds that it is not to be undertaken "through the appropriate procuring agency." I believe this objection to be unfounded, for this effort constitutes an adjunct of the information-gathering and encouragement requirement of section 8(b) (5). In contrast to section 8(d) (1), which provides that SBA-prime contractor "consultations" necessary for the mandatory subcontracting program be "through the appropriate procuring agency," no such requirement was either intended or expressed by the Congress relative to the information-gathering and encouragement provided for by section 8(b) (5).

We have no choice but to carry out the responsibilities imposed on SBA under section 8(b) (5). To the extent such responsibilities can be discharged satisfactorily through the mandatory subcontracting program established with DOD and GSA under section 8(d), it will be unnecessary to resort to section 8(b) (5).

We are always ready to discuss ways and means of furthering our mutual responsibilities with regard to subcontracting and any other matters in behalf of small business concerns. In this regard, as you know, our two agencies are presently carrying on discussions for the purpose of clarifying the mandatory subcontracting program and revising implementing instructions accordingly.

With kindest regards, I am,

Sincerely,

JOHN E. HORNE, *Administrator.*

DEFENSE SMALL BUSINESS SUBCONTRACTING PROGRAM

The Department of Defense and the Small Business Administration have jointly considered what should be done to improve the effectiveness of the small business subcontracting program. We have concluded that industry, defense, and SBA have a significant contribution to make to the success of this program. We have set forth below the areas in which we believe each participant should increase its efforts.

THE CONTRACTOR

The contractors should exert increased effort in identifying commodities and services where small businesses are not now being solicited and should be, where the number of small firms solicited is too few, or where for other reasons (such as increased requirements), additional small sources are desired. This should be a day-to-day activity for the buyers. They should be firmly impressed with the company's contractual commitment to the objectives of the small business program; they should be so conditioned that they will routinely identify requirements where additional small business sources can profitably be used.

As requirements valued at \$10,000 or more are identified where qualified small business firms are desired—as established through joint discussion of local personnel—the company should routinely forward all data necessary to develop new sources to the Small Business Administration. These requests should, of course, contain complete procurement data including drawings or other technical descriptions of the end products desired. These referrals ideally should take place during advance procurement planning to allow the SBA time for a comprehensive source search. Also, when purchase management reviews the quarterly checklist summary, they should consider repetitive purchases for future referral to SBA.

It is recognized that this referral program will result in the submission of more potential small business opportunities than may be expected from the current contractual provisions requiring referrals above specified dollar amounts. However, this activity should provide mutual benefits in the form of more competition among small firms and, consequently, improved procurement.

The contractors should also continue to examine their specifications and, wherever feasible, should revise those in which small firms are precluded from bidding because of unnecessarily restrictive requirements. In procurements which will require the contractor to obtain materials which are subject to qualified products list requirements, the contractor is encouraged to solicit all companies whose products have been tested and qualified.

THE SMALL BUSINESS ADMINISTRATION

In the area of source development, the Small Business Administration will seek out small suppliers when requested by the contract management office or the contractor, to determine availability of qualified potential suppliers for the requirement and the company involved. It is recognized that improving the small business share of subcontracting will depend upon the caliber and scope of the effort devoted to developing new small business sources that will meet the rigid requirements of the defense industry.

SBA's source finding function is separately established by law. An inventory of qualified small business firms is maintained by SBA for the purpose of providing reliable sources of supply to all Government agencies and Government contractors. Where contractors have identified purchases where qualified small firms are desired, the SBA representatives are available to consult with the contractor's personnel to become acquainted with (i) the military item being manufactured; (ii) the Government's and contractor's specifications; and (iii) the level of quality control and reliability which the contractor will require of any recommended supplier.

In addition, to enable SBA representatives to be most effective, they will be invited to accompany the CMO during the periodic reviews to be made of the contractor's small business subcontracting program. To the extent that it is feasible, the Government's representatives will also discuss current and future procurement plans of the contractor for which there may be new small business source requirements.

Of course, the final decision to use new sources will continue to rest with the contractor because he must stand behind the completed end item when it is delivered. However, it will obviously be helpful for the Administrator of the SBA to know to what extent the sources recommended by SBA field offices have been accepted by the prime contractors as potential sources. With this information,

the Administration will be in a position to supervise the selection of qualified small business suppliers.

THE CONTRACT MANAGEMENT OFFICE

The military contract management office should concentrate on prevailing upon the prime contractors to conscientiously and thoroughly identify procurement areas where additional competent small sources can be used. The CMO will point out to the contractors that this activity, which has as its general purpose the expansion of competition, is in the company's interest as well as in the interest of the Defense Department.

It has been and continues to be the responsibility of the CMO, pursuant to ASPR 1-707.4(e), to determine the adequacy of the contractor's small business subcontracting program and to bring any deficiencies to the attention of the contractor's designated liaison officer with a request for corrective action. To pinpoint responsibility for the performance of this function, approximately 300 prime contractors currently participating in the defense small business subcontracting program have been divided into three groups with each military department being assigned responsibility for monitoring the program for one of these groups. Further, delegations of authority for this function have been made to specific orders in the military departments' field organizations.

In accordance with ASPR 1-707.6, the CMO will cooperate with and assist representatives of the SBA to make periodic studies and surveys of prime contractors' subcontracting practices and procedures.

The frequency of the subcontracting reviews will largely be determined by the CMO's impression regarding the prime contractor's effectiveness. Initially, we must expect that more attention and more review probably will be required. For example, the CMO may decide to review a handful of purchase orders over \$10,000 with several buyers at frequent intervals early in the program. He can then advise the company small business liaison officer how well he feels purchasing management's instructions are being carried out.

Additionally, it would be well during the early stages of this program to review quarterly the understanding and conduct of the company's source development efforts. This would be scheduled after management had summarized the checklists on purchases over \$10,000. Eventually, once the CMO is convinced that the company is doing a completely adequate job in this area, he will want to increase the interval between such reviews to every other quarter or every third quarter.

Whenever the CMO reviews with the contractor the quarterly management report and checklists, SBA subcontracting representatives should be invited to participate in and carry on a mutual exchange of impressions and suggestions.

At these reviews, CMO must decide whether a scarcity of a company's request for sources results from the large number of procurements on which small firms are already being solicited; the type of purchases made by the plant, or other valid reason; or whether it results from a failure on the part of the company to conscientiously carry out the program.

In conclusion, while it is the policy of the Department of Defense to conduct its procurement programs to obtain adequate competition so as to assure that military items are purchased at fair and reasonable prices, it is recognized that excessive source qualification is expensive and could defeat the purpose of obtaining price reductions through competition. Therefore, our joint efforts should be devoted to securing optimum competition among qualified sources for all of our requirements. In the final analysis, it will be the quality of the sources developed and our ability to improve the caliber of potential sources to an acceptable level capable of meeting the rigid requirements of defense work, by which all of our efforts will finally be judged.

ATTACHMENT 4

ASSISTANT SECRETARY OF DEFENSE,
INSTALLATIONS AND LOGISTICS,
Washington, D.C., May 3, 1963.

Mr. WILLIAM E. ZISCH,
President, Aerojet-General Corp.,
Azusa, Calif.

DEAR MR. ZISCH: We in the Department of Defense and the Small Business Administration have jointly considered what additional steps should be taken

to improve the effectiveness of the small business subcontracting program. We have concluded—and we are hopeful that you will agree—that industry, Defense, and SBA can make a greater contribution to insure the success of this program.

We believe that each party should concentrate its efforts in a specific area in order to achieve maximum results with a minimum of personnel and costs. We have set forth in the attached guidelines those areas to which the efforts of each participant might most effectively be directed.

It is recognized that the new activities, particularly those related to the referral program, will result in the development of more potential small business opportunities than may be expected from the current contractor provisions requiring referrals above specified dollar amounts. However, we are hopeful that you will consider this activity as providing mutual benefits in the form of more competition among small firms and, consequently, improved procurement.

To initiate this new program we are writing to the 25 Defense prime contractors who received the highest net value of prime contract awards in fiscal year 1962 requesting their concurrence. When you have had an opportunity to review it, we would appreciate hearing from you with respect to adopting it in your firm.

Sincerely,

JOHN E. HORNE,

Administrator, Small Business Administration.

THOMAS D. MORRIS,

Assistant Secretary of Defense (Installations and Logistics).

ATTACHMENT 5

DEFENSE PRIME CONTRACTORS IN THE SMALL BUSINESS PROGRAM

- | | |
|----------------------------------|---|
| 1. Lockheed Aircraft Corp. | 15. Republic Aviation Corp. |
| 2. General Dynamics Corp. | 16. Avco Corp. |
| 3. Boeing Co. | 17. McDonnell Aircraft Corp. |
| 4. North American Aviation, Inc. | 18. Grumman Aircraft Engineering Corp. |
| 5. General Electric Co. | 19. Bendix Corp. |
| 6. Martin-Marrietta Corp. | 20. Ford Motor Co. |
| 7. United Aircraft Corp. | 21. Westinghouse Electric Corp. |
| 8. Western Electric Co. | 22. International Telephone & Telegraph Corp. |
| 9. Sperry Rand Corp. | 23. Hughes Aircraft Co. |
| 10. General Motors Corp. | 24. American Machine & Foundry Co. |
| 11. Raytheon Co. | 25. Newport News Shipbuilding & Dry Dock Co. |
| 12. Aerojet-General Corp. | |
| 13. Douglas Aircraft Co. | |
| 14. Radio Corp. of America | |

ATTACHMENT 6

ASSISTANT SECRETARY OF DEFENSE,
INSTALLATIONS AND LOGISTICS,
Washington, D.C., May 3, 1963.

Memorandum for : The Assistant Secretary of the Army (I. & L.) ; the Assistant Secretary of the Navy (I. & L.) ; the Assistant Secretary of the Air Force (Materiel) ; the Director of the Defense Supply Agency.

Subject : Small business subcontracting program.

To improve the effectiveness of the current small business subcontracting program and to insure that all participants—contractors, SBA field representatives, and the military departments contract administrators—are working in harmony, we are forwarding to you the attached guidelines.

This has been coordinated with the small business advisers of the military departments and with the SBA. It is also being sent to the top 25 major prime contractors and to all SBA regional offices. It is requested that it be forwarded without modification directly to all military offices administering contracts with the Defense prime contractors listed in the enclosure.

It is requested that initial meetings with these prime contractors be arranged at an early date to insure that this program is in full operation by the end of September. SBA representatives will be invited to accompany the military departments at these meetings.

As we gain experience with the small business subcontracting program, and as the SBA increases its staff to handle more primes, the program will be spread to other firms currently participating in a more limited way in the DOD small business subcontracting program.

THOMAS D. MORRIS,

Assistant Secretary of Defense, Installations and Logistics.

Mr. HORNE. Mr. Chairman, I would like to point out too, and I think in all fairness I should, that if there is seemingly an impasse at the staff level, I do not hesitate, both Mr. Maness and I, to get in touch with the top echelon at the Defense Department.

Just about 2 weeks ago, for example, one of the top officials and I had lunch together so as to try to resolve some of the negotiations that were in process at that time. We think we have pretty successfully done so.

I would not want to leave the impression that the top echelon of the Defense Department has not been sympathetic and helpful and cooperative.

Now, naturally, we have not gotten everything we asked for, and I do not assume that we always will or maybe at any time will do so. But the attitude on the whole has been most helpful and most cooperative.

Senator PROXMIRE. One more question. You referred on page 14 to the Comptroller General's answer at the Joint Economic Committee. I asked him that question. And he did indeed indicate he had no evidence that there was a higher cost because of the set-aside program.

But, once again, No. 1, it just seems logical when you exclude your efficient big contractors from bidding on Government work, you are excluding them from the—well, presumably if you did not exclude them they would come in on many occasions, on some occasions, and bid the job for less and there would be a saving.

Now, you cannot prove it, but certainly the burden of proof should be on those who are excluding these people and saying that there is no greater cost to the Federal Government.

It would just seem sensible that if you permitted everybody to bid you would get a lower price.

Maybe there is a longrun effect.

Mr. HORNE. We think there is a longrun effect, Mr. Chairman, and the Defense Department indicates it thinks so, too.

But what you have said, Mr. Chairman, is true of every other set-aside program in existence, not just this one.

Senator PROXMIRE. Yes, I know. And, I think, the case on this set-aside program is something unique. But I have already stated that.

Mr. HORNE. Also, I want to point out again that there are written into this procedure, not only with respect to competition with also regard to other set-asides, all kind of safeguards to get the lowest possible price and to get the highest possible quality.

I think the whole record will bear it out that we have gotten that.

Senator PROXMIRE. If you do that, you do not need a set-aside. If your small business is going to bid the lowest price, you do not need the set-aside.

Mr. HORNE. I pointed out, too, Mr. Chairman, and everyone who works in this area on a day-to-day basis agrees, that the set-aside actually invites, and encourages, and brings about more competition among small business people than is the case where there is no set-aside.

Of course, we try very carefully to make set-asides only where we know there is going to be competition among small businesses and qualified small businesses to perform.

But here again, the procedure is exactly the same here as it is whether we are manufacturing electronics or some other equipment that the Defense Department or other Government agencies are buying.

Senator PROXMIRE. I yield to the Senator from Alabama.

Senator SPARKMAN. Let me say I think that this has been a very fine statement.

Is the situation not briefly this: That over the past several years there has been a tendency for the percentage of small business participation in Government business to go down and down? Was it not against that background that President Kennedy issued his Executive order a little over a year ago, a couple of years ago?

Mr. HORNE. Senator, of course you are right, sir. It is true that in 1954 the percentage of Defense Department purchases, for example, going to small firms was in excess of 25 percent.

Now, the percentage going to small firms has never been as high as we believe there is capacity for the small businessman to perform, so his capacity to perform would be in excess of 25 percent. But in 1954 he was getting approximately 25 percent.

This dropped constantly until in 1961, if I remember correctly, he got just under 16 percent—15.9 percent.

This accounted for the fact that the President in March, I believe it was of 1961, sent a letter to Secretary of Defense McNamara expressing concern that the percentage of the Government purchases going to small firms continued to dwindle. He asked the Secretary to take all necessary and sound measures, sensible measures, to reverse this decline and to increase this by 10 percent over the previous year.

Well, now, I fully believe, and I think Defense Department officials would testify to the effect, that had it not been for the vehicle of the set-aside program to help realize the President's objective it could not have been done and would not have been done.

So it did go up a little bit, to in excess of 17 percent—I believe, Senator, 17.7 percent—in fiscal year 1962.

Senator SPARKMAN. At what rate is it running now?

Mr. HORNE. It is running now, the first 9 months of this year, at about 15.8 percent.

Senator SPARKMAN. In other words, it is still low?

Mr. HORNE. It is still low.

Now, for your further information, the President has again a few weeks ago, April 2, sent another letter to the Secretary of Defense asking that they try to attain this fiscal year, which ends as you, of course, know June 30, a figure at least equal to that of the previous year.

It is running a little higher this year than it ran in 1961, but it is also running lower than it ran at this time in 1962.

Senator SPARKMAN. And is that not largely due to the fact that over the past several years we have had a greater concentration into what we might call extra-heavy procurement—that is, weapons systems and things of that kind—in which small business cannot hope to participate greatly?

Mr. HORNE. This, of course, is true, Senator.

Senator SPARKMAN. So far as prime contracts are concerned.

Mr. HORNE. Yes, sir. This is true. The purchasing patterns have changed to the extent that there have been more and more large items which the small businessman cannot perform on.

Now, by the same token, we in SBA encourage that, of the items which everybody is in agreement on can be performed by small business, a more vigorous effort be made that the small businessman have his opportunity on these items.

Senator SPARKMAN. That is exactly the point I was leading up to.

But let me ask you: Does not that same condition, so far as heavy work and big work is concerned, apply to the field of construction?

Mr. HORNE. Of course it does, sir.

Senator SPARKMAN. And we do recognize the fact that in Government purchases, Government procurement, there is a certain class of procurement, a certain type, that small business can very well supply. Is that not true?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. Is that not true likewise in the field of construction?

Mr. HORNE. Yes, sir.

Senator SPARKMAN. And, as a matter of fact, when Congress passed the Small Business Act it did not exclude construction, did it?

Mr. HORNE. No, sir.

Senator SPARKMAN. The construction was added in 1958?

Mr. HORNE. 1958.

Senator SPARKMAN. Only because the Comptroller General had raised a question? I do not believe he had ruled it out. He questioned it. He questioned whether or not construction was included. Is that not right?

Mr. HORNE. That is entirely accurate.

Senator SPARKMAN. Do you not believe that the reasons are just as strong today for pointing out particularly the segment of Government procurement and Government business, including construction, as they were back when we originally passed the act?

Mr. HORNE. Unquestionably I think you are right, sir.

Senator SPARKMAN. Is that not what the purpose of this is?

Mr. HORNE. Exactly right, sir.

Senator SPARKMAN. And would not in your opinion the repeal of this act which Congress passed deliberately in 1958 take away one of the props by which small business is helped to get a greater percentage?

Mr. HORNE. Senator, there is no question in my mind but what you are right. And not only would it take away the prop here, but it could open the door for the same prop to be taken away in every other industry in which the Government is buying goods.

Senator SPARKMAN. Is it not true that small business constitutes about half so far as employment is concerned?

Mr. HORNE. I think it is running a little less than half, sir. I think it is running about between 40 and 45 percent.

Senator SPARKMAN. In other words, small business in this country actually works between 40 and 45 percent of the people that are employed?

Mr. HORNE. Yes, sir.

Senator SPARKMAN. And yet they are getting less than 16 percent now of Government business. Is that right?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. And is it not the aim of the original SBA legislation to try to get a more nearly equitable break for small business?

Mr. HORNE. I would say that is right.

Senator SPARKMAN. Not just because the small businesses are in existence but because of the necessity of maintaining a strong economy of which small business makes up a great proportion?

Mr. HORNE. That is the whole essence of the act. The whole language is just as clear as it can possibly be. That is exactly what Congress had in mind.

Senator SPARKMAN. The purpose back of the Small Business Act, as a matter of fact, goes back to World War II when we had the Smaller War Plants Corporation. Do you remember?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. That was enacted after we got into World War II or shortly before. It was while we were in mobilization.

Mr. HORNE. That is right, sir.

Senator SPARKMAN. It was done for the purpose of strengthening what we considered to be a great segment of the economic backbone of this country, the small business segment of our economy.

Mr. HORNE. That is right, sir. And, Senator, if I may say so, I think this is one of the main purposes that Congress also had, upon the outbreak of the Korean war, in enacting legislation to establish the Small Defense Plants Administration, which is now the Small Business Administration.

Senator SPARKMAN. I was going to ask you that question.

And then later we converted to a peacetime status, and that is when we passed the Small Business Administration Act.

Mr. HORNE. Yes.

Senator SPARKMAN. We really converted the Small Defense Plants Administration over to the Small Business Administration, did we not?

Mr. HORNE. Yes, sir. And one reason for your retention of the procurement authority in the conversion of this agency was the realization that now with the cold war like it is, the Government is going to continue for an indefinite period to be a larger purchaser of goods and services, and you wanted the small businessman in so-called peacetime or cold war time to continue to be able to benefit, at least to share somewhat equitably in the Government purchases.

Senator SPARKMAN. In other words, this is a part of the whole philosophy of the Small Business Administration Act, is it not?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. And you feel that it is a necessary part?

Mr. HORNE. Yes, sir.

Senator SPARKMAN. And construction is a part, just as essential as is purchasing, procurement, and so forth?

Mr. HORNE. Yes, sir.

I would like to point out too, if I may say, that this legislation was never a partisan program. When it was first enacted it had more than a great majority of Members on both sides of the aisle in support of it.

In 1953 when it was converted with all the previous authorities contained in it plus additional authorities, it was when the Republican Party was in power.

Senator SPARKMAN. That is right. It was sponsored by Senator Capehart.

Mr. HORNE. That is right, sir.

Senator SPARKMAN. And this philosophy was written into the law at that time, was it not?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. And regardless of what the motive may be, the effect of this legislation is enacted into law would be to breakdown in part that philosophy?

Mr. HORNE. It would be a question of the Congress having marched to the top of the hill or at least driving toward the top of the hill and now reversing itself and going down the hill.

Senator SPARKMAN. And in your opinion it would be hurtful to the small business segment of our economy?

Mr. HORNE. I think it would, sir.

Senator SPARKMAN. That is all, Mr. Chairman.

Senator PROXMIRE. Senator Simpson.

Senator SIMPSON. No questions.

Senator PROXMIRE. Senator Neuberger.

Senator NEUBERGER. I do not really have any questions except that I just see no need for this bill. Consequently, I believe that the case for not passing it has been very well presented. But I am very eager to hear any arguments in support of it so I shall withhold my further decision.

Senator PROXMIRE. Senator Dominick.

Senator DOMINICK. I am somewhat in the air still on some of these percentages and figures, Mr. Horne, and maybe I can clarify for my own sake some of the record figures that are in.

When we are talking about set-asides in your statement, are we talking only about prime contracts?

Mr. HORNE. Yes, sir.

Senator DOMINICK. That is the first point. So that the percentages that were mentioned do not include in them any subcontracts which may have been given by a large prime contractor and therefore small business got the benefit of it?

Mr. HORNE. No, sir. Nor by the small primes that may have on occasions—and sometimes they do—subcontracted to large firms. Nor are there any figures in here of large primes contracting to large subs.

This is purely, as I answered your first question, a prime contract figure going to small businesses.

Senator DOMINICK. Now, on the top of page 4, in referring to fiscal year 1958, when your agency was not recommending construction set-

asides, you say that small business concerns were awarded 72.8 percent of the dollar value of all military construction procurements.

Mr. HORNE. Yes, sir.

Senator DOMINICK. Are these prime contracts that you are referring to?

Mr. HORNE. Yes, sir.

Senator DOMINICK. Now, we go down to the bottom of page 4, and you say in here, "In fiscal year 1960 the small business share of military construction contracts declined to 50 percent."

Mr. HORNE. Yes, sir.

Senator DOMINICK. Is that prime contracts we are talking about?

Mr. HORNE. Yes, sir.

Senator DOMINICK. Secondly, at that time was the SBA indulging in construction set-asides?

Mr. HORNE. We had started before then, and we stopped in the meantime, and in the fiscal year 1960 we were not participating.

At that time, the Department of Defense and the Administrator of SBA, on the recommendation of the Department of Defense, had agreed not to exercise the construction set-aside program.

Senator DOMINICK. So this is the point I was trying to make in answer to I think some of the points that the chairman was making. This reduction from 72.8 percent in 1958 to 50 percent in 1960 came about under the same circumstances: there was no construction set-aside in effect.

Mr. HORNE. That is right. And it was at this time that the Defense Department and SBA decided that the thing had dropped so drastically that they wanted to reactivate and retain the set-aside construction program.

Senator DOMINICK. All right. Now, you did reactivate it, and you increased to 54 percent in 1961.

Mr. HORNE. Yes, sir.

Senator DOMINICK. And again you are speaking of prime contracts only?

Mr. HORNE. Yes, sir.

Senator DOMINICK. Now, in 1962 you went down to 47.8 percent.

Mr. HORNE. Yes, sir. And this mixing—some of the things that both the chairman and Senator Sparkman brought out, where we are doing a different kind of purchasing—helped to account for part of this. Our contention is, Senator, that without the set-aside program it would have been a great deal lower.

Senator DOMINICK. Now, the question that I have is: Was there a change between 1961 and 1962 in the type of military contract, construction contract, which you were trying to analyze and provide set-asides for?

Mr. HORNE. It would be a change, Senator Dominick, that would be hard to pinpoint as to specifics. But as we all know, as we have gotten into the building of these large establishments, missile sites and things of that sort, there has been an increasing area where the small businessman is not as qualified to be a prime contractor as in some other areas.

So it is in these other areas that we have, through the set-aside program, attempted to put our emphasis, not in the areas where we know he is not qualified.

For example, we know he cannot make a tank.

Senator DOMINICK. Would you attribute the further decline down to 38.4 percent during the first half of the current fiscal year to the same reason or other reasons or what?

Mr. HORNE. I think this is partly the reason, Senator.

Now, of course, this is a partial figure. This figure may very well change before the end of the year. It may very well be 50 percent again or 45 percent. There is no way to tell right now.

Senator DOMINICK. I understand that. Now, you referred, when discussing with the Senator from Alabama, to a figure of 15 percent and 16 percent.

Mr. HORNE. Yes, sir.

Senator DOMINICK. What kind of a percentage was that?

Mr. HORNE. It is not just military construction but it relates to all DOD purchases.

You see, the DOD last year, Senator—I do not know the exact figures—I think purchased about \$25 billion worth of everything. This year it will be \$25 or \$30 billion worth of everything. And these are overall figures.

Senator DOMINICK. Has there been a decrease in the number of bids by small firms when you have a set-aside?

Mr. HORNE. I do not think so, sir.

Senator DOMINICK. Do you interpret S. 757 as applying only to military construction contracts?

Mr. HORNE. No, sir; it applies to all construction contracts.

Senator DOMINICK. Do you know whether the total amount of Government business—maybe this is what your testimony with the Senator from Alabama was—to small business increased or decreased during this same period from 1958 through 1962?

Mr. HORNE. It was a slight decrease overall, Senator Dominick.

Senator DOMINICK. Percentage or dollar amount?

Mr. HORNE. Well, it would be percentagewise, yes, sir. I can give you the figures beginning back in 1954. I do not have them with me. I have them here beginning in 1961.

In 1961, as I said a moment ago, the total amount of DOD dollars going to small business was 15.9 percent. In 1962, fiscal year 1962, largely as a result of the President's letter I think to Secretary McNamara, an effort was made, a more intensive effort was made, using the set-aside program as the chief vehicle. It went up to 17.7 percent.

It has dropped now so far this fiscal year to a little below what it was—well, to 15.8 percent.

Now, we do not know whether this 15.8 percent by the end of this year will be back to the 17.7 percent it was last year or not. We just have to wait and see.

Senator DOMINICK. Now, let me go on just a little bit further. We have had, then, a decline in your prime contract awards on military construction contracts from 1958 down to fiscal 1962—

Mr. HORNE. Yes, sir.

Senator DOMINICK. An almost steady decline except for the 1 year when you put it back in and it went up 4 percent. Has there been a decline in the total volume of business conducted by small business concerns in the military construction contracts over that period? I am not talking about awards now. I am talking about subcontracts and a variety of other things.

Mr. HORNE. I do not have figures that would tie that down. My belief is that there has not been. But I have no way to prove that, sir.

Senator DOMINICK. In other words, what we are dealing with here is in your opinion the question of whether there has been a decline in prime contracts and not the question of whether small business has been hurt or not?

Mr. HORNE. Well, I think there has been a decline in the percentage. Of course, the Government has also in recent years, as you know, been spending more money. It may be that the dollar amount going to small business is greater than it was but by the same token the dollar amount going to big business would be greater. The percentage though going to small business has declined, that is, from a prime contract level. We do not have the figures from the subcontract level. But Mr. Maness, who works closely with this, thinks this follows the same trend.

Senator DOMINICK. When we are talking about 50 percent of the contract awards, are we talking about a large number of individual cases or are we talking about a small number with a fairly large amount?

Mr. HORNE. You are necessarily talking about a pretty large number of individual cases, Senator, because about 90 percent of the membership of the construction industry would be considered small under our size standards.

And also our size standard, which is \$7.5 million average annual receipts for a period of 3 years, would necessarily prevent figures being counted as going to small business once they get outside this average. They would be large business then and could not participate in a set-aside.

Senator DOMINICK. How do you determine the area in which you will be soliciting bids? Suppose, for example, that you had a possible contract in my own State, in the Denver metropolitan area of Colorado. From what areas would you solicit bids?

Mr. HORNE. You mean what geographical area?

Senator DOMINICK. Yes.

Mr. HORNE. Let me explain this. I want to just, if I may, sir, comment on one word. We do not solicit ourselves. The Department of Defense in its purchasing anything under \$500,000 immediately passes judgment as to whether or not this should be a set-aside. And with any figure above \$500,000 they may take the initiative themselves and say this should be set aside, or we may take the initiative and recommend that this be a set-aside.

Now, if we recommend that this be a set-aside, then they pass judgment. They agree or disagree. If they disagree, there is no way we can compel them to agree.

So it is not as much a SBA solicitation I should think as initiation.

Senator DOMINICK. Let's suppose they agree. Then what do you do?

Mr. MANESS. Senator Dominick, once they agree to a set-aside, if they do not have sufficient sources and request us to furnish sources, our regional offices will generally go within a reasonable range of the geographical area of firms known to them through the facilities inventory.

Senator DOMINICK. That is what I want to know.

Mr. MANESS. But there is no precise rule or criteria that we can say it is either a State or a county or several States. It is what could be termed—a loose term—"reasonable range."

Senator DOMINICK. This is a problem that I am faced with and I am sure that others have been.

Let's suppose the Denver metropolitan area is the one involved, and it is a small business set-aside. Then in many cases, as I understand it, bids come in from Utah or from Wyoming or from Kansas. We are always glad to have people from Utah, Wyoming, and Kansas come to Colorado, but not if there is a qualified contractor in Colorado available to do the job. In many cases they cannot get that job because they are excluded.

Mr. MANESS. Senator, it is an advertised procurement. It is a competitive procurement. We cannot deprive any concern from submitting a proposal or a bid on any one job.

Therefore, if it is going to be competitive and advertised, it has to be freely competitive—excepting in this sense, sir: If it were not a set-aside, large concerns would come from any State in the Union—and they can and have—by establishing branches, bringing in top personnel, supervising personnel and equipment. However, in the set-aside you are restricting it to the small man, in a smaller reasonable geographical range, and therefore you are getting more of the local talent than you would if you did not have the set-aside.

Mr. HORNE. I think Mr. Maness has made a good point, Senator. Here again there is no way I can give you definite proof of this, but I think by the very nature of the small compared with the large that you are more likely—you are not always going to get it, but you are more likely—to have your set-asides confined to people in the general area than you are with your big ones. Because your big ones more easily move from one part of the country to the other.

The point you are driving at would not be corrected by doing away with the set-aside program. And I am sure also that the firms—

Senator DOMINICK. If I may say so, Mr. Horne, right there, just to interrupt you, I think it would be because the problem we face sometimes is that the employees of a large contractor will be temporarily out of work, with nothing to do, no income coming in, and a small business set-aside is made, and someone from some other State or some other area gets that job which otherwise they could be working at themselves, you see.

So it is not a comparable competitiveness.

Mr. HORNE. If it were not a set-aside, if it were open bidding, would not anybody outside Colorado have a right to bid?

Senator DOMINICK. Certainly. But they would have a right to bid together. This would not be Government action excluding people working for a local contractor from bidding.

Mr. HORNE. Of course, they are bidding together here, but it is just confined to the small people bidding together.

By the same token, I am sure the contractors in Colorado would not want to be excluded from bidding on contracts that may be called for in Utah or Kansas or some other place, whether it is small or large. They would want to bid on a nationwide basis if they have interest in doing so.

And this is what is done on a competitive bidding basis, whether it is on set-aside which is also competitive, or whether it is under non-set-aside, which is also competitive.

Senator DOMINICK. I do not want you to think I am necessarily supporting this bill. What I am trying to do is get the facts clear in my own mind.

Mr. HORNE. I understand, sir.

Senator DOMINICK. In the process of pondering on this bill and the reduction in the amount of military construction prime contracts going to small business, have you had any alternative ideas as to how the usefulness of small business might be further encouraged? Additional proposals, in other words?

Mr. HORNE. I do not have any alternative ideas that would be intended to replace the set-aside program.

We are constantly, as Mr. Maness explained a few moments ago, working with Defense Department authorities in an effort to improve the small business possibilities.

Here again, of course, we do not have—and I am not suggesting that we should have—the mandatory authority to impose on the procuring agencies any program which is not compatible with their thoughts or not acceptable to them.

All we can do in such cases is recommend. And we are, sir, constantly exploring ways of improving it and making our recommendations to the procuring agencies.

Senator DOMINICK. Thank you, Mr. Chairman.

Senator PROXMIRE. Senator McIntyre.

Senator McINTYRE. Mr. Chairman, first of all, Mr. Horne, I want to compliment you on a fine statement.

Mr. HORNE. Thank you, sir.

Senator McINTYRE. I believe that you make a strong case against this bill.

I have one question. You had reference to this \$7.5 million figure. Are you personally satisfied that this is about as fair a criterion as we could possibly have today in dividing between small and big?

Mr. HORNE. Senator, I think it is. We made this change from \$5 to \$7.5 million only after very careful study and public hearings in which people, interested parties, were notified in advance—that is, we publicized it through the appropriate channels—that we were having hearings, to give everybody a chance to come in and testify.

Based on the testimony that we received, and based on the letters and so forth, and our own investigations, we think this is about as fair as we can get.

But all of these size determinations made by us are already subject to review, always subject to reconsideration.

It is true that under the act, and I think properly so, that Congress provides for flexibility in our size determinations. This flexibility I might add sometimes causes us some headaches, because as I said before, we cannot possibly reach a size determination that is satisfactory to everybody.

We are openminded about it. We do think this precise standard in the construction industry is a fair and reasonable one, but we are not closeminded to the extent that we could never make another change in it.

Senator McINTYRE. But you presently feel it a fair criterion?

Mr. HORNE. I think it is, sir, based on all the information we could get.

We studied this several months, Senator, before we changed from \$5 to \$7.5 million. And I am not aware of any real complaint from members of the industry that this is an unfair determination.

Senator McINTYRE. Thank you, Mr. Chairman.

Senator PROXMIRE. Apropos of that last question, \$7.5 or \$5 million or even \$3 million represents a contractor who is capable of considerable mobility and able to operate in a number of States and so forth?

Mr. HORNE. This would be true though, Senator, without the set-aside program.

Senator PROXMIRE. I understand. But I mean when you raise the gross limit you are setting aside contracts for people who are not just local operators, who have one big shovel and maybe three or four people who can come in and work for them. This is a pretty substantial operation to average a gross of \$7.5 or \$5 million over a period of these years.

Mr. HORNE. Well, of course, Mr. Chairman, the fellow who has a one-man shovel would not have very much success getting bonding. We have to take in consideration that these jobs are bonded. And then we take into consideration—

Senator PROXMIRE. What is the average number of employees that they would employ?

Mr. HORNE. I do not know the number of employees, Mr. Chairman.

Senator PROXMIRE. That would vary a lot.

Mr. HORNE. That is right.

Senator PROXMIRE. Let me just ask you one more question. Last year I asked you apropos of the questions that were asked by Senator Dominick—and I am reading now from page 148:

Do you have any statistics to indicate what proportion of subcontracts small businesses are getting now?

And your answer then, By Mr. Waale, was:

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.

Now, at that time Mr. Waale said the figures would be forthcoming presently. What are they now?

Mr. HORNE. I will ask him to answer again.

Mr. WAALE. Under the present reporting system the Department of Defense has put in, DD Form 1140, we will be able to receive figures from the Department of Defense and indicate what the participation is in this subcontracting program.

Mr. HORNE. When will this be available?

Senator PROXMIRE. What are the figures you have available? A year ago you said the figures would be presently forthcoming. That was 11 months ago. They should be available.

Mr. WAALE. We will have to submit them for the record, Mr. Chairman.

Senator PROXMIRE. Will you do that?

Mr. WAALE. Yes, sir.

(The requested information follows:)

A report by the Department of Defense dated May 2, 1963, a copy of which is supplied, shows that subcontract payments to small firms, pursuant to the program promulgated under Public Law 87-305, amounted to \$3.139 million during the period July 1962 through March 1963, as compared with \$4.01 million in the 1962 fiscal year.

DEPARTMENT OF DEFENSE—DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS, JULY 1962 TO MARCH 1963

A total of \$6,256,770,000 in defense work was obtained by small business firms in the first 9 months of fiscal year 1963. This total, which consisted of \$3,117,-752,000 in prime contract awards, and \$3,139,018,000 in subcontract payments from large defense subcontractors, was equivalent to 31.7 percent of the prime contracts awarded to all business concerns for work in the United States. In fiscal year 1962, the small business share was 33.2 percent (table I).

Subcontract figures represent only those payments to small business concerns which have been made by large defense contractors reporting under the defense subcontracting program. Since the criterion for reporting is that the defense contract be over \$500,000 and have substantial subcontracting potential, not all large concerns are required to report, and consequently there is some understatement in the amount shown in this report as subcontracted to small business.

In the first 9 months of this fiscal year (July-March), small business received 15.8 percent of the total prime contracts, compared to 16.7 percent in the same months of the previous year.

Table II shows the small business share of prime contracts for experimental, developmental, test, and research (EDTR) work. In the July-March period of the current fiscal year, total EDTR procurement was \$3,874 million, compared to \$4,025 million for the same 9 months in the previous year. Procurement from small business firms increased to \$108 million from \$104 million, and the small business portion was 2.8 percent in the first 9 months of this fiscal year compared to 2.6 percent in the same period of the previous year. Figures for EDTR procurement are included in the totals shown in table I.

OFFICE OF THE SECRETARY OF DEFENSE.

MAY 2, 1963.

TABLE I.—Small business share of defense procurement

[Amounts in thousands]

Type of firm and category of procurement	Fiscal year to date		Fiscal year, July 1961 to June 1962
	1963, July 1962 to March 1963	1962, July 1961 to March 1962	
Defense procurement (prime contracts) from all business firms, total.....	\$19,758,891	\$19,208,884	\$26,681,294
Missile and space systems.....	4,971,425	4,948,598	6,690,093
Other major hard goods.....	8,550,374	8,575,268	12,070,316
Services.....	972,265	772,003	1,089,740
Commercial items, construction and all purchases under \$10,000.....	4,682,043	4,488,554	6,297,314
Civil functions.....	582,784	424,461	533,831
Defense procurement (prime contracts and subcontracts) from small business firms, total.....	6,256,770	(1)	8,875,268
Prime contracts (subtotal).....	3,117,752	3,209,763	4,864,548
Missile and space systems.....	66,975	49,226	90,972
Other major hard goods.....	558,341	605,570	1,015,575
Services.....	205,209	237,827	372,280
Commercial items, construction and all purchases under \$10,000.....	2,024,469	2,135,913	3,143,243
Civil functions.....	262,758	181,227	242,478
Subcontracts.....	3,139,018	(1)	4,010,720
Percentage of defense procurement to small business firms, total.....	31.7	(1)	33.2
Prime contracts (subtotal).....	15.8	16.7	18.2
Missile and space systems.....	1.3	1.0	1.4
Other major hard goods.....	6.5	7.1	8.4
Services.....	21.1	30.8	34.2
Commercial items, construction and all purchases under \$10,000.....	43.2	47.6	49.9
Civil functions.....	45.1	42.7	45.4
Subcontracts.....	15.9	(1)	15.0

(1) Not available.

TABLE II.—*Small business share of military procurement for experimental, developmental, test, and research work*

[Amounts in thousands]

Type of firm and department	Fiscal year to date		Fiscal year 1962, July 1961 to June 1962
	1963, July 1962 to March 1963	1962, July 1961 to March 1962	
Total to U.S. business firms.....	\$3,874,352	\$4,025,418	\$5,669,870
Army.....	504,348	576,079	736,226
Navy.....	688,707	523,608	953,049
Air Force.....	2,681,297	2,925,731	3,980,595
Small firms.....	108,173	103,635	197,126
Army.....	26,734	19,144	41,950
Navy.....	41,091	45,130	85,096
Air Force.....	40,348	39,361	70,080
Other firms.....	3,766,179	3,921,783	5,472,744
Army.....	477,614	556,935	694,276
Navy.....	647,616	478,478	867,953
Air Force.....	2,640,949	2,886,370	3,910,515
Small firms as percent of total.....	2.8	2.6	3.5
Army.....	5.3	3.3	5.7
Navy.....	6.0	8.6	8.9
Air Force.....	1.5	1.3	1.8

Senator PROXMIRE. Thank you very much, Mr. Horne. I want to join my colleagues in saying this was a very able and persuasive case. Thank you very much.

Mr. HORNE. Thank you, Mr. Chairman. I appreciate it very much. (Mr. Horne later submitted the following information:)

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., June 4, 1963.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is to supplement my testimony of May 7, 1963, relating to S. 757 now under consideration by your Subcommittee on Small Business. Reference is made specifically to the additional information, supplied on May 14, 1963, by Mr. Paul A. Askew, representing the Building and Construction Trades Department, AFL-CIO.

1. Mr. Askew states that of the five small business set-aside construction contracts at the Mississippi test site, three awards went to nonunion firms and two to union firms. In our judgment, these five contracts bear out what the Small Business Administration (SBA) has always contended; namely, that "some small construction firms are unionized, some are not. The same is true of large construction firms" (see my prepared statement read into the hearing record, May 7, 1963, on S. 757). Thus, Mr. Askew's additional information does not substantiate his assertion that construction set-asides are harmful to unionized firms.

2. Mr. Askew further states that "on highway work subcontractors would be given up to 50 percent of the total amount of work." This statement is irrelevant. Although the annual Federal highway construction bill amounts to some \$4 billion per annum, no small business set-asides are being made in Federal highway construction.

3. Mr. Askew further states that "On building construction, subcontractors would do between 70 and 85 percent of the work." This statement is questionable, and I believe it to be incorrect. The chairman and the subcommittee are familiar with the construction industry, and know that a general contractor normally subcontracts only the mechanical and electrical parts of his contract. That part accounts for approximately 40 percent of the total cost of the contract and, in some cases, for more than 50 percent (see testimony of Mr. Henry H.

*Glassie, counsel, National Electrical Contractors Association in hearings, Subcommittee No. 2, House Committee on the Judiciary, 85th Cong., 1st sess., H.R. 3241 et al.). Hence, even if it is assumed that large construction firms subcontract all their mechanical and electrical work to small contractors only, which is not the case, subcontracting to small business in building construction would, thus, still fall far short of Mr. Askew's alleged 70 to 85 percent.

4. Mr. Askew raises again the unproven allegation of increased cost to the Government as a result of set-asides. On this point Mr. Askew submits 33 cases where set-asides are alleged to have cost the Government more than if the procurements had not been set aside for small business.

These 33 cases have been repeatedly cited, and their validity as evidence of the increased cost allegation refuted by the procuring agencies concerned, because the alleged higher costs are based on bids submitted by large firms in the knowledge that they were not qualified to bid on set-aside procurements. Hence, the procuring agencies did not consider such bids as a sound basis on which to judge whether or not excess costs accrued to the Government. Since awards on these procurements were made to small business bidders, it is apparent that in the judgment of the contracting officers concerned, and in the light of the mandatory Government estimates for the projects, the lowest responsive small bidders did offer the Government a fair and reasonable price.

5. While Mr. Askew speaks of higher costs to the Government as a result of set-asides, he fails to mention that set-asides have proved to be a potent factor in increased competition by small contractors. Increased competition generally results in lower overall costs to the Government.

In support of his increased cost allegation, Mr. Askew also supplies a number of statements by Government officials which seem to indicate increased costs to the Government. It is submitted that for any statement to be found on the higher cost side, there are at least an equivalent number of statements for the no-increased-cost assertion. Thus, the Honorable Thomas D. Morris, Assistant Secretary of Defense (Installations and Logistics) stated on December 15, 1961, as follows:

"With respect to the cost of contract placement, administration, and inspection, it is not considered to be more costly to perform these functions under a small business award than it is under an award to a large firm."

The Secretary of the Navy, testifying before the Senate Procurement Subcommittee said:

"I don't know of a case where the Navy or the Government has wound up by paying more money for an item as a result of doing business with small business firms."

Procurement agencies of the Government, including those testifying on S. 757, have also repeatedly stated that they have no conclusive evidence that the small business construction set-aside program involves additional costs to the taxpayer. Besides, they point out, protection against unreasonable prices lies in the fact that the Armed Services Procurement Regulation (1-706.3(b)(1)) provides that:

"If, prior to the award of a contract involving an individual or class set-aside for small business, 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 may withdraw a unilateral set-aside determination or initiate the withdrawal of a joint set-aside determination."

The only conclusion that can, therefore, be drawn from these statements cited on both sides of the argument is that arrived at by the House Committee on Appropriations, in its report issued last August, in which it stated: "It has proven virtually impossible to ascertain whether or not small business set-asides have resulted in payment of price differentials." (Rept. No. 2175, 87th Cong., 2d sess., House of Representatives, p. 4).

6. Mr. Askew stated that "Except for missile site construction during 1962, small firms were awarded upward of 75 percent of all military construction contracts." Requested to substantiate this statement, Mr. Askew merely names three publications, without citing date or page of these sources.

On the other hand, the attached table, to be found in the hearings, Subcommittee No. 2, House Committee on Banking and Currency (87th Cong., 2d sess., Sept. 5-14, 1962, p. 146), shows that out of the nearly one-half million construction firms in the United States, 65 large construction firms received \$3.8 billion in construction awards, an amount which encompasses the bulk of Federal construction work.

It is my hope that this additional information bearing on the subject will be helpful in dispelling any misunderstandings created. I also trust that the figures

I cite herein will convince you of the importance of set-asides to the welfare of small business.

With kind regards, I am,
Sincerely,

JOHN E. HORNE, Administrator.

Enclosure.

1961

Company	Prime U.S. contracts		Total contracts including subsidiaries and foreign (company figures)
	Publicly reported to Engineering News-Record	Company's figure	
1. Bechtel Corp., San Francisco	\$306,155,000	\$287,908,000	\$323,176,000
2. Peter Kiewit Sons Co., Omaha	¹ 178,768,655	¹ 244,205,928	
3. Fluor Corp., Los Angeles	173,870,141	167,000,000	196,000,000
4. George A. Fuller Co., New York City	¹ 157,037,944	¹ 214,200,000	
5. United Engineers & Constructors, Inc., Philadelphia	150,750,000		
6. Morrison-Knudsen Co., Inc., Boise	¹ 144,764,633	¹ 163,825,000	394,798,000
7. Perini Corp., Framingham, Mass.	¹ 130,259,067	¹ 100,842,490	184,818,382
8. American Bridge Division of United States Steel Corp., Pittsburgh	87,618,304		
9. Johnson, Drake & Piper, Inc., Minneapolis	¹ 83,730,622	¹ 118,158,302	132,217,084
10. Del E. Webb Corp. Phoenix	¹ 79,226,384	¹ 125,941,062	
11. Kaiser Engineers Division, Henry J. Kaiser Co., Oakland	¹ 77,476,613	¹ 79,824,231	195,528,731
12. Diesel Construction Co., Inc., New York City	77,450,000	104,500,000	
13. George F. Driscoll Co., New York City	70,424,000	71,186,300	
14. Stone & Webster Engineering Corp., Boston	68,000,000		
15. Paul Hardeman, Inc., Stanton, Calif.	¹ 67,051,581	¹ 143,630,725	176,069,725
16. Malan Construction Co., New York City	66,867,355	66,867,355	
17. Huber, Hunt & Nichols, Inc., Indianapolis	64,000,000	65,000,000	67,000,000
18. Daniel Construction Co., Inc., Greenville, S.C.	60,960,502	81,788,393	
19. Guy F. Atkinson Co., San Francisco	60,342,373	68,880,571	
20. Turner Construction Co., New York City	59,988,470	¹ 130,890,000	
21. Walsh Construction Co., New York City	¹ 59,770,328	¹ 64,895,136	66,486,903
22. McCloskey & Co., Philadelphia	58,783,436		
23. J. W. Bateson Co., Inc., Dallas	56,225,579	80,505,155	
24. Slattery Contracting Co., Inc., Maspeth, N.Y.	53,748,221	59,659,446	62,232,906
25. M. W. Kellogg Co., New York City	52,650,000		
26. Western Contracting Co., Sioux City	¹ 49,356,551	¹ 88,702,980	98,629,172
27. Martin K. Eby Construction Co., Wichita	48,184,828	¹ 59,538,430	
28. H. R. H. Construction Co., New York City	47,120,000	51,684,000	58,602,000
29. Jamison Co., Inc., Cedar Springs, Ga.	47,000,000		
30. Robert E. McKee, Inc., El Paso	¹ 45,118,755	¹ 58,793,412	
31. Frank J. Rooney, Inc., Miami	44,942,207	¹ 41,000,000	
32. Brown & Root, Inc., Houston	¹ 44,301,069	190,426,258	254,539,721
33. Blount Bros. Construction Co., Montgomery, Ala.	43,899,772	52,159,000	54,863,614
34. Sanderson & Porter, Inc., New York City	43,000,000	43,000,000	
35. Crane Construction Co., Chicago	41,805,000	52,000,000	
36. S. J. Groves & Sons Co., Minneapolis	¹ 41,776,275	45,229,834	57,479,834
37. F. & S. Contracting Co., Butte	39,899,359		
38. Stolte, Inc., Oakland	¹ 38,701,445	¹ 38,972,587	
39. Gordon H. Ball, Danville, Calif.	¹ 38,645,655	38,645,655	
40. Cauldwell-Wingate Co., Inc., New York City	38,404,000	38,404,000	
41. Lane Construction Co., Meriden, Conn.	37,904,426	39,563,469	41,461,469
42. Fischbach & Moore, Inc., New York City	¹ 37,700,000	¹ 48,000,000	80,000,000
43. W. S. Bellows Construction Corp., Houston	37,385,000		
44. Hunkin-Conkey Construction Co., Cleveland	36,897,175	45,133,557	
45. Rust Engineering Co., Pittsburgh	36,621,327	¹ 42,700,000	
46. Frederickson & Watson Construction Co., Oakland	¹ 36,042,730	¹ 36,042,730	36,816,342
47. John McShain, Inc., Philadelphia	35,872,200	50,000,000	
48. Ebasco Services, Inc., New York City	35,500,000	153,275,000	
49. Fruin-Colnon Contracting Co., St. Louis	¹ 34,704,911	¹ 47,973,384	49,050,954
50. Hendrickson Bros., Inc., Valley Stream, N.Y.	34,100,144	34,100,144	
51. Al Johnson Construction Co., Minneapolis	¹ 33,512,822	¹ 33,401,822	75,905,002
52. Williams & Burrows, Inc., Belmont, Calif.	32,715,478	27,239,000	
53. Gust K. Newberg Construction Co., Chicago	¹ 32,595,641	¹ 34,806,083	
54. Kenny Construction Co., Skokie, Ill.	¹ 31,708,752		
55. William Simpson Construction Co., Los Angeles	30,668,000	32,579,000	
56. J. A. Jones Construction Co., Charlotte, N.C.	29,350,615		
57. James McHugh Construction Co., Chicago	29,033,404		
58. Standard Construction Co., Inc., Washington, D.C.	28,398,803		
59. C. J. Langenfelder & Sons, Inc., Baltimore	28,165,157	28,165,157	382,127,788
60. Dravo Corp. Pittsburgh	¹ 26,281,915	¹ 48,811,000	81,970,000
61. Joseph P. Blitz, Inc., New York City	25,771,600	26,499,100	36,499,100
62. Haas & Havnie, San Francisco	25,763,000	25,763,000	
63. Henry C. Beck Co., Dallas	25,045,231	29,459,607	31,043,781
64. Koppers Co., Inc., Pittsburgh	25,000,000		
65. Charles J. Rogers, Inc., Detroit	¹ 25,000,000		

¹ Includes joint ventures.

Senator PROXMIRE. Our next witness is Mr. William A. Schmidt, Deputy Commissioner, Public Buildings Service, accompanied by Mr. Paul Barron and Mr. Henry Levy. You gentlemen, as I understand, represent the General Services Administration.

STATEMENT OF WILLIAM A. SCHMIDT, DEPUTY COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY PAUL BARRON, SPECIAL ASSISTANT TO THE GENERAL COUNSEL; HENRY A. LEVY, DIRECTOR, BUSINESS SERVICES AND SMALL BUSINESS, OFFICE OF ASSISTANT ADMINISTRATOR; AND ROBERT T. DAVIS, DIRECTOR OF LEGISLATION

Senator PROXMIRE. Mr. Schmidt, we are very happy to have you with us. The gentleman on your left I take it is Mr. Barron.

Mr. SCHMIDT. Yes, sir. On my right is Mr. Levy and on my left are Mr. Barron and Mr. Robert Davis, Director of Legislation.

Mr. Chairman, we appreciate the opportunity of appearing before your subcommittee today for the purpose of expressing the views of the General Services Administration on S. 757.

Before commenting on the various provisions of this bill, I wish to state that the General Services Administration is in complete accord with the policy set forth in the Federal Property and Administrative Services Act of 1949, as amended, and the Small Business Act of 1953 that a fair proportion of the total purchases of property and contracts for services by the Federal Government shall be placed with small business concerns.

In carrying out this policy, GSA has a dual responsibility. First, the responsibility 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 of the Government with an appropriate basis for maintaining vigorous small business programs.

Secondly, as one of the major procurement agencies of the Government, GSA has the responsibility for assuring that small business receives a fair share of this agency's purchases and contracts.

With respect to the specific provisions of S. 757, sections 1 and 2 of the bill would eliminate the present authority in the Small Business Act of 1953 to make set-asides for small business where maintenance, repair, or construction is involved. Since the enactment of the Small Business Act the authority contained therein to set aside procurements for award solely to small business concerns has constituted a major and one of the most effective means of carrying out the policy of Congress that a fair proportion of Government contracts for supplies and services shall be awarded to small business concerns.

It is significant that the Congress subsequently amended the 1953 act to clearly indicate its intent that maintenance, repair, and construction contracts were to be set aside for small business.

Any change in the Small Business Act which would make the authorities in the act applicable to one class of small business concerns but not to another clearly would be inequitable and would impair the ability of procuring agencies to comply with the general intent of Congress regarding small business.

The experience of the General Services Administration has been that, in general, the set-aside authority in the Small Business Act is helpful with respect to achieving the policy of Congress and the President regarding small business.

More specifically, we have found in recent years that, by reason of an increase in the number of construction projects which are beyond the capability of small business concerns, it has become increasingly difficult to insure that small business concerns receive a fair proportion of work involving maintenance, repair, and construction contracts.

The availability of the set-aside authority provides invaluable assistance in connection with efforts to award maintenance, repair, and construction contracts to small business concerns.

In that connection I might speak to our experience in the fiscal year 1962.

We have two major program areas, one new construction—that is, construction of new buildings—and the other repair and improvement of existing buildings.

In the fiscal year 1962 our total prime contract awards for new construction were \$125.3 million. Of that amount, \$13.3 million, or 10.6 percent, was awarded to small business concerns.

Of the \$13.3 million, \$8.2 million was covered under the set-aside program.

Senator PROXMIRE. Broken down in percentages, that would be about a little more than 10 percent small business got?

Mr. SCHMIDT. 10.6 percent.

Senator PROXMIRE. And about three-quarters of what they got was set-aside?

Mr. SCHMIDT. About 62 percent was set-aside.

Senator PROXMIRE. Three-fifths.

Mr. SCHMIDT. Now, in the repair and improvement program, our total awards were \$71.9 million, of which \$61.5 million, or 85.5 percent, went to small businesses.

Of that \$61.5 million, \$44 million was covered under the set-aside program, or 71.5 percent of the total small business awards.

Senator PROXMIRE. Total procurement?

Mr. SCHMIDT. This concerns only construction, repair, and improvement and not GSA's total procurement program.

Senator PROXMIRE. Small business got 85 percent of that?

Mr. SCHMIDT. Just of repair and improvement.

Senator PROXMIRE. Repair and improvement.

Mr. SCHMIDT. They got 85 percent. The two programs combined amount to a total of \$197.2 million, of which \$74.8 went to small businesses, or 37.9 percent.

In new construction, the percentage is quite a bit lower than in the repair and improvement.

Our experience so far this year—that is, through the end of April—under new construction, is total awards amounting to \$203.4 million, of which \$23.3 million, or 11.5 percent, went to small business firms. And of that \$23.3 million, \$10.4 million was covered under set-aside program.

Senator PROXMIRE. Do you have any subcontracting figures?

Mr. SCHMIDT. No, sir, I do not. These are all prime contracts, prime contract awards.

Senator PROXMIRE. Would it be difficult and expensive, onerous, to secure those figures?

Mr. SCHMIDT. It would be difficult. We could obtain those only—

Senator PROXMIRE. You try to have small business take a greater part in subcontracting?

Mr. SCHMIDT. Yes, we do, but there is no formal reporting procedure.

Senator PROXMIRE. Then you do not know how it is working?

Mr. SCHMIDT. We would have to solicit the contractors who are under contract with GSA.

Senator PROXMIRE. Go ahead.

Mr. SCHMIDT. Under the repair and improvement program thus far this year we have awarded \$33.9 million, of which \$32.2 million, or 95 percent, was awarded to small business concerns. Of the \$32.2 million, \$30 million was covered under the set-aside program, or 93 percent of the small business awards.

It has also been the experience of the GSA that the small business concerns in the maintenance, repair, and construction industry are very competitive. We have found that where projects have been set aside for award exclusively to small business concerns, competition has been adequate to insure reasonable prices.

In addition, we have found that the small business concerns bidding on maintenance, repair, and construction set-asides are capable of qualifying as responsible bidders and are competent to meet required standards.

With respect to the other changes, sections 3 and 4 of the bill would modify the present provisions of section 8(d) of the Small Business Act regarding subcontracts, which involve construction, maintenance or repair by adding (1) a congressional finding that prime contractors in construction, maintenance or repair, as a matter of practice and policy, generally do subcontract a large percentage of their construction work, and (2) a requirement that prime contractors for construction, maintenance, or repair file certain reports with the Federal agency administering the contract in order to maintain present policies and practices of subcontracting to small business firms.

The effect which sections 3 and 4 of S. 757 would have on the Small Business Act is not entirely clear particularly in view of the fact that the finding which would be required by section 3 is introduced by the language "all other statutes to the contrary notwithstanding."

If the intent is merely to supplement the present provisions of the act, it is our opinion that, in general, these changes would serve little purpose and that, in particular, the reporting requirements would be unduly burdensome when measured in terms of the benefits derived. To the extent that reports are necessary we feel that they should be prescribed on the basis of administrative regulations. The matter of appropriate reporting currently is being reviewed within GSA and with the Department of Defense.

On the other hand, if the intent of sections 3 and 4 of the bill is to limit the present provisions of the 1953 act regarding the establishment of small business subcontracting programs by construction contractors, it is our view that such changes in the Small Business Act would serve no purpose other than to hinder the achievement of the congressional policy providing for the awarding of a fair proportion of Government contracts to small business.

The General Services Administration in cooperation with the Department of Defense and the Small Business Administration has developed a small business subcontracting program as required by the Small Business Act Amendments of 1961. These were put into effect approximately a year ago. The General Services Administration put this program into effect insofar as civilian agencies are concerned by promulgating appropriate policies and procedures in the Federal Procurement Regulations.

These procedures prescribe the use of a small business subcontracting program clause for inclusion in prime contracts and subcontracts for property or services (including maintenance, repair and construction) as required by the act.

The clause, as I said, is being included in GSA maintenance, repair and construction contracts as required by the Federal Procurement Regulations. With the exception of a few questions which were raised when the clause was first introduced, we are not aware that contractors have encountered any particular difficulties in operating in accordance with the provisions of the clause.

We feel that the present statutory requirements with respect to small business subcontracting programs is a most necessary and helpful means of achieving the policy of the Congress with respect to small business. We feel that any changes which would preclude the application of this authority to contracts involving maintenance, repair or construction would militate against the achievement of the congressional policy and therefore would be most undesirable.

In closing, I wish to reiterate that General Services Administration shares the interest of both the Congress and the President in furthering the role of small business in Government procurement. To accomplish this objective we believe that it is necessary to utilize all of the means available, including present statutory provisions with respect to set-asides and subcontracting programs.

Withdrawal or diminution of any portion of such authority would be contrary to this purpose.

For these reasons, therefore, the General Services Administration is opposed to enactment of S. 757.

Mr. Chairman, this concludes my prepared statement, and if you or any of the members of the subcommittee have any questions we shall be very happy to answer them.

Senator PROXMIRE. This is another able statement, and we certainly appreciate it. Particularly I am appreciative of the fact you gave us those statistics, although they were not in your statement, and that you were able to indicate precisely what proportion of the procurements, of your prime procurements at least, are set-asides, what proportion small business gets, and so forth. It is very useful.

But it is very difficult for me to understand on page 5 when you indicate that it would be burdensome to require prime contractors to make a report on their subcontracts.

I should think that every efficient contractor must know what his subcontracts are.

Mr. SCHMIDT. Yes, they do.

Senator PROXMIRE. And I cannot understand why he simply cannot make this report available.

Neither you nor Mr. Horne was able to really tell us, tell the committee, what proportion of procurements small business really gets.

Senator Dominick asked it first, and it is a very pertinent question. I want to ask it too.

The fact that we have a pretty good picture from you, a clear picture, on prime contracts, is helpful, but unless we get the subcontract picture we really do not know. Is that not correct?

Mr. SCHMIDT. That is right, sir.

Senator PROXMIRE. Now, why will it be difficult for a prime contractor? I can see you would have to have limits on the smaller contracts. But say over a half million or a million dollars why would it be difficult for him to make a report indicating how much was subcontracted? He is supposed to do it. He is supposed to subcontract it. You are part of the bill that we passed a few years ago with this in mind, GSA and Defense, to encourage subcontracting with small business.

But unless you know, certainly, and unless we know too, we have no idea whether this program is effective or not.

Mr. SCHMIDT. Well, possibly it is due more to the opposition on the part of contractors to add to the reports they already make.

And I might say this, Mr. Chairman: We are at present reexamining all of our procedures under construction. One of the problems that we do have is with respect to subcontractors, and we are considering seriously a procedure which would require the prime contractor to list his subcontracts.

Senator PROXMIRE. Yes. A very simple report. I am not asking for great detail. Just how much of his business was subcontracted, No. 1, and, if he can do it, how much of it was subcontracted to businesses which are small—that is, that gross less than \$7.5 million, if he could make an estimate of it. I recognize it might be difficult for him to be precise because he may not have the figures himself. But some kind of an indication to us of how much small business is really getting.

Mr. SCHMIDT. It certainly would give us a more complete report.

Senator PROXMIRE. Now, the statistics that you gave us indicated that certainly in the area of repair and improvement small business is doing extraordinarily well—85 percent.

Mr. SCHMIDT. Well, this includes a lot of small contracts, and contracts that can run up as high as \$5 million or more.

Senator PROXMIRE. No matter whether we had a set-aside program or not, they would continue to get a very large proportion? Is that not correct? Because of the very nature of the work?

Mr. SCHMIDT. Because of the very nature of the work; yes, sir.

Senator PROXMIRE. So where this is effective, where this will have any influence at all, is in, by and large, the construction area, new construction area?

Mr. SCHMIDT. Yes sir. In new construction. For example—

Senator PROXMIRE. And here, with the set-aside program on the prime contracts, which is the only statistic we have, small business is getting 10 or 12 percent.

Mr. SCHMIDT. Yes.

Senator PROXMIRE. What good is it?

You might say they would get a little less if you did not have set-aside, but I am not so sure that is true in view of the record here.

Mr. SCHMIDT. I think the difficulty in the construction program is this, if I can illustrate it this way: For example, in 1962, of the appro-

priation to GSA in the amount of \$189 million, \$178.9 million of that was for six projects. The total appropriation was for 24 projects, but 6 of the projects amounted to \$178.9 million of the \$189 million.

So that we feel that with these larger projects certainly we cannot do much in the way of small business awards.

Senator PROXMIRE. You are exactly right. This brings us to the crux of it. If you are going to help small business, it seems to me what you have to do is consider—and maybe it is completely unfeasible and maybe it cannot be done—the breaking down of these big contracts, where there is any possibility of it at all, where it could be justified economically, so that there would be a chance for small business to get a proportionate share. That plus, it seems to me, a vigorous subcontracting program, where at the very minimum you know how much of these big contracts are being subcontracted.

If you do not do either of these things, the set-aside, it seems to me, is doing a very feeble job and is going to do a feeble job.

Because you say, after all, a small business firm, by and large, is not going to be able to get a \$30 million contract and get bonded for it. They cannot do it.

Mr. SCHMIDT. No doubt in the subcontracting field small business is getting a fair proportion of the subcontracts.

Senator PROXMIRE. Well, we do not know. We do not have any figures. They should be. We hope so. We have passed legislation to require consideration in this area. We do not have many people working on it, but we have tried. But until we get a report you do not know and I do not know.

Mr. SCHMIDT. No; we do not have a report, sir.

Senator PROXMIRE. Senator Sparkman.

Senator SPARKMAN. Would you mind repeating those figures again before the Appropriations Committee? The \$189 million, was it?

Mr. SCHMIDT. This was in 1962, \$189 million.

Senator SPARKMAN. Of which \$179 million—

Mr. SCHMIDT. \$179 million was for six projects.

Senator SPARKMAN. In other words, those were projects that were outside the ability of most of these small businesses even to consider?

Mr. SCHMIDT. They ranged in size from \$18 million to almost \$60 million.

Senator SPARKMAN. I presume that is what you meant when you said,

We have found in recent years that, by reason of an increase in the number of construction projects which are beyond the capability of small business concerns, it has become increasingly difficult to insure that small business concerns receive a fair proportion of work involving maintenance, repair and construction contracts.

Mr. SCHMIDT. That is correct, sir.

Senator SPARKMAN. Were you here when I asked Mr. Horne if it were not true that this tendency has been prevalent, both in procurement and in defense contracts over the past several years?

Mr. SCHMIDT. Yes.

Senator SPARKMAN. And in your opinion it has resulted in narrowing the field in which small business could get a part?

Mr. SCHMIDT. In the construction field, yes.

Senator SPARKMAN. In construction, yes. And I am certain it is true in the defense contracting field too because of the great weapons.

systems that they have developed and the massive construction that they have had.

Mr. SCHMIDT. I want to distinguish between our repair program and the construction program. In the repair program you have a tremendous number of small contracts and all types of repair work.

Senator SPARKMAN. Yes. And this is carrying out the philosophy of the act that established the Small Business Administration and its amendments? Is that not correct?

Mr. SCHMIDT. That is correct.

Senator SPARKMAN. In your opinion, is it helpful to small business?

Mr. SCHMIDT. I would say yes. In fact, I think we would like to see more small business locally encouraged to bid on jobs, construction jobs. Certainly a local contractor would take a great deal more pride in the job he is doing.

We advertise our jobs nationally. We do not restrict our advertising to the local area. But we certainly have a preference to local contractors.

Senator SPARKMAN. That is all, Mr. Chairman.

Senator PROXMIRE. Senator Simpson.

Senator SIMPSON. No questions.

Senator PROXMIRE. Senator McIntyre.

Senator MCINTYRE. Mr. Chairman, more as a matter of inquiry to you, both Mr. Horne and Mr. Schmidt have indicated that it is customary in the trade that the prime contractor subcontracts a great deal of his work. This is almost a custom or habit. I am addressing these questions more to you, Mr. Chairman. Do we have any legislation to that effect, to actually encourage subcontracting?

Senator PROXMIRE. Yes, indeed. We fought through that legislation. I thought we had to water it down too much. But we fought it through. And the SBA has set up people in various parts of the country where that is their sole responsibility. What is it, John? Fifteen or sixteen people? I know there is one in the Chicago office.

Senator SPARKMAN. I do not know. They testified some time ago.

Senator PROXMIRE. It is not enough to do the job in my view, but at least we have some legislation.

Senator SPARKMAN. It is all they can get under their present manpower limitations.

And in addition to that, if I may be permitted—

Senator PROXMIRE. Yes, indeed.

Senator SPARKMAN. The Defense Department has small business experts in most of its large installations to assist small business in getting in on subcontracts and even on prime contracts where prime contracts are of the type they can handle.

Senator PROXMIRE. Of course, the difficulty is when you do not have the information, when you do not know how many subcontracts or have any idea, any kind of report, even an estimate. You just do not know how the program is working.

We know from experience that there is a tendency for the prime contractor to do two things: No. 1, to keep the good work himself, because he is human and he wants to make money and not subcontract it out; and No. 2, there is a tendency to subcontract in some cases to bigger firms that do his work.

That was the reason why we had this legislation.

I think if we have nothing else, even if we did not have anybody in the field, we ought to get reports of some kind from the prime contractors so we at least know what the score is. That is the argument I make.

Senator McINTYRE. Mr. Chairman, I thought I heard you make some reference to the fact that this had been "watered down." You mean that the Government—

Senator PROXMIRE. We tried to give the SBA more authority than the Defense Department wanted them to have, and the Defense Department prevailed.

Senator McINTYRE. No further questions.

Senator PROXMIRE. Senator Dominick.

Senator DOMINICK. Just a couple of questions.

First of all, do you have any evidence which indicates that small business would not have gotten the same percentages if the set-aside program had not been in effect?

In other words, what assurance do you have that the set-aside program was what provided these contracts with the small companies?

Mr. SCHMIDT. I do not believe we have evidence that would prove that without the set-aside program we would or would not have made as many awards to small business firms. But we feel that to make an exception in this case would certainly tend to single out one particular industry.

For this reason we believe the set-aside program should apply to the construction and repair and maintenance as well as other procurements.

Senator DOMINICK. Well, you were here when Mr. Horne gave his testimony that when they stopped using the set-aside program that 72 percent went to small business, which is the highest that they have had.

Now, this would indicate to me that there is as much likelihood of small business getting these contracts or maybe even more so without a set-aside program.

Mr. SCHMIDT. This might be very true in the field of repair and improvement. But I do not know that it would apply necessarily in the new construction.

Senator DOMINICK. His figures were, of course, based on the military construction. I specifically asked him that.

Now, let me ask another question. Do you have any figures which would indicate how much subcontracting the small contractors themselves do?

Mr. SCHMIDT. No, I do not. The only thing I can say is that our prime contractors are required to perform at least 12 percent of the work.

Senator DOMINICK. Does a fair proportion of this go to big companies?

Mr. SCHMIDT. In the subcontracting?

Senator DOMINICK. Yes.

Mr. SCHMIDT. Well, I do not have any figures to speak from.

Senator DOMINICK. What I am wondering about is whether this is more of a two-way street than we actually think. This is the point I have been trying to make: First of all, without the set-aside the big companies subcontract to small firms. With the set-aside the small

companies subcontract to big firms. "You scratch my back, and I'll scratch yours."

Mr. SCHMIDT. I cannot speak to that.

Senator DOMINICK. You do not have any figures on it?

Mr. SCHMIDT. I do not have any figures, sir.

Senator DOMINICK. Do not the subcontractors in military construction work and in some of the other Defense Department contracts have to prequalify before a contract is granted?

Mr. SCHMIDT. I believe that is a requirement in some. In fact, this is a procedure that we are studying at the moment, because we have become increasingly concerned with our construction contracts and the subcontracts.

Senator DOMINICK. If they have to prequalify, then there should be on file somewhere a complete list of the subcontractors of all the prime contractors.

Mr. SCHMIDT. Well, on all of our contracts we have lists of all the subcontractors. This would take, however, a considerable amount of work to determine their classification under the Small Business Act, as to whether they are small business or large business.

Senator DOMINICK. You do not have a continuing file on the small business qualified contractors?

Mr. SCHMIDT. Not in the subcontract field.

Senator DOMINICK. Well, in the contract field?

Mr. SCHMIDT. We do in the contract field as nearly as I recall.

Senator DOMINICK. That is all.

Senator PROXMIRE. Thank you very much, Mr. Schmidt. You have been very helpful. We appreciate your testimony.

Our final witness today is Mr. George J. Burger, our good friend, who is a hard fighter for small business and has been for many years and who has done a grand job. He is vice president of the National Federation of Independent Business.

Mr. Burger, we are happy to have you here.

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

Mr. BURGER. I am George Burger, vice president, legislative activities, National Federation of Independent Business. We are a national organization composed solely of smaller, independent business and independent professional people. Our home office is San Mateo, Calif. I am in charge of the Washington, D.C., office.

We now have over 190,000 individual, directly supporting and participating members throughout all 50 States. This number is increasing every week. From the standpoint of number of directly supporting and participating members we are the largest business-professional organization in the country.

Our main function is one of encouraging these independent enterprisers—who are the admitted backbone of our free enterprise system, and who are one of the strong pillars supporting our very liberties—to take a continuing, active, informed interest in Government affairs, State and National, and of providing them with programs to do so in an intelligent, effective manner.

Senators and staff members of this committee are familiar with the federation. Our members set our stands on legislative matters through

nationwide mandate polls in which they send signed ballots directly to their Congressmen. Additionally our members advise us of the facts underlying their problems in our regular yearly factfinding special surveys. Thus, federation positions are not determined by any board of directors or filtered through committees, but rather come right from the members at the grassroots themselves. In other words, we speak authoritatively.

As we advised your subcommittee on June 7, 1962, we have not polled our members on the Metcalf bill. We are, however, committed by membership vote to support all programs which aim to provide fairer and freer opportunities for independents to bid on and win Government contracts.

Now, the bill in question would relieve the Small Business Administration of its power to set aside contracts for small business bidding in the construction contractor industry. As we understand it, the industry is clamoring for this action, and that is the reason for the bills and for these hearings. But, frankly, we are a little puzzled.

As you likely understand, we have a representative number of construction contractors among our members. For example, our member-district chairman broadly represent a cross section of our membership. Of the approximate 1,000 such chairmen who replied to our 1961 special survey on the President's tax revision program, about 3 percent were construction contractors.

Our members, given problems they consider urgent, generally take them up with us, either by mail or through our staff field representatives. We receive such mail and reports each and every day of each and every week of the year. We get further information through our special factfinding surveys. We encourage this because it strengthens our ability to serve not only members but those in Government who are interested in small business problems.

With these facts in mind, one would expect that we would be getting some volume of mail and reports as to the alleged set-aside problem in the construction contractor field. The fact is, however, that we have had perhaps six complaints on this over the past 5 years. Even after we completed and publicized our testimony which we gave to your subcommittee last year, we received perhaps 10 letters of criticism from our members active in the field in question and experienced the resignation of perhaps three such members.

Senator PROXMIRE. How many letters did you get approving your position before the committee?

Mr. BURGER. We have 190,000 members of the federation, and we have only received the number that I mentioned in opposition to our position.

Senator PROXMIRE. How many letters in favor of your position?

Mr. BURGER. Well, if they were opposed, the Washington office would have been flooded with mail.

Senator PROXMIRE. You got no letters in favor, 10 letters against, and 3 members' resignations? Is that correct?

Mr. BURGER. Exactly. Thus, our question: Where is the widespread popular support—therefore need—for these bills in the industry?

As we told you last year, we have followed closely all activities of the Small Business Administration, including its set-aside programs, from the agency's very beginning in 1953. And I might add, Mr.

Chairman, during the life of the agency I have personally conferred with many regional offices from coast to coast, even up until last year, to find out particularly about the set-aside program on Government business.

On the basis of this firsthand knowledge we can say that within the potential granted it by the Congress the agency has done a fine job in serving the legitimate interests of the small business community, which in all such cases happen to be identical with the interests of our Nation.

Certainly members of this subcommittee will agree that the direction of Government contract awards, especially in these days of multi-billion dollar and still growing Federal spending, decisively affects the shape of our economy and, therefore, of business units large and small. If there is any doubt of this, think of the TFX controversy.

With that thought in mind, consider that since 1957 the share of Government contracts taken by smaller independent business suppliers has decreased. Significantly, this decrease has taken place during a period when the SBA, by wise and reasonable use of powers granted it by Congress (granted it, by the way, after long and deep study based on years of experience) has greatly increased the number and value of set-asides for the small business community.

For example, during 1954 (the SBA's first full year of operation) smaller firms secured \$161 million in defense contracts under the set-aside program. By 1962 the total dollar volume won by smaller firms under the set-aside program had reached \$1.8 billion, an increase of over 1,100 percent. Yet as between 1954 and 1962, the small business share of defense contracts (which includes the set-aside figures) dropped from 25.3 percent to 17.3 percent.

Under these circumstances we suggest that the need is for further strengthening, not for weakening, the hand of the Small Business Administration on Government contracts. Any other course would be sheer suicide from the standpoint of the Nation's independents—for the Lord only knows how much smaller this percentage might be today without the agency's assistance to small firms.

Now, we want to make it quite clear that we are keenly sensitive to the fact that those in the construction contractor industry deserve the utmost in fair play and in consideration. This is their due as American citizens. You likely recall that the SBA moved in that direction about the time of your hearings last year by liberalizing the size standards then prevailing. Perhaps further action is needed along this line.

We must say, however, that appearances indicate that the forces behind these bills do not want reasonable treatment under the set-aside program; rather they want complete and utter destruction of the set-aside program for construction contractors.

This is what so deeply concerns us. For the implication seems clear that the drive for this bill may be nothing but a first step in the direction of complete dismantlement of the entire set-aside program. Exempt that industry, and precedent is set for exempting all others. In this sense, the bill directly affects not only those in the construction contracting 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 supply-

ing 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.

In conclusion, we do hope that the members of this subcommittee will give long and serious consideration to these facts before reaching decisions on the Metcalf bill now before you.

Thank you, Mr. Chairman.

Senator PROXMIRE. Senator Sparkman.

Senator SPARKMAN. How long have you been here representing small business?

Mr. BURGER. I have been here on Capitol Hill since 1935.

Senator SPARKMAN. This is a very strong statement from a longtime veteran representing the best interests of small business, and I appreciate it.

Mr. BURGER. I was very much interested in the question that my good friend Senator Proxmire put to me about hearing from our members.

In the recent Mandate we had an item in there pertaining to the Small Business Administration on a pamphlet they issued under the wage and hour law. I think nearly a thousand requests have come in for that pamphlet from every State in the Union.

So, in other words, Senator Proxmire, if there were strong opposition to this bill, we would be hearing it in the Washington office of the national federation or our office at San Mateo.

Senator PROXMIRE. You mean if there was support?

Mr. BURGER. I beg your pardon?

Senator PROXMIRE. You mean if there was strong support for the bill? You would not anticipate that there would be strong support for this bill in a small business organization, would you? After all, your organization is made up of people who I presume, if anything, would tend to benefit from the present provisions in the law, and they would not want to see those provisions upset. They would not favor a bill, I should say, which will knock out the set-aside for small business. This is a small business organization you represent.

On the other hand, you have had three people who felt so vigorously that they resigned from your organization, which is pretty drastic.

Mr. BURGER. Three out of a membership of—

Senator PROXMIRE. Yes, but, nevertheless, you had a few. And the only letters you have gotten—very few, admittedly—have been against your position and for the bill.

Mr. BURGER. Exactly.

(See letter, p. 230, for additional information.)

Senator PROXMIRE. In view of the fact this is a small business group you represent, I am astounded that you have not gotten a flood of mail. And you have gotten not a single letter supporting your position and against the bill.

So what I conclude is that your organization is indifferent to this bill, that they do not care about it. And since this is a bill that is

designed, from the standpoint of those who oppose it, to eliminate a privilege which some small business firms have, I do not think the case is very strong.

Mr. BURGER. Senator Proxmire, I firmly believe that if you start making exceptions on this program it will be the start of the big parade, that others will come in.

When exceptions were made to the antitrust laws for certain segments of our economy, it opened the gates for many to try to get the same situation.

So I say we are holding to the premise that we cite with this picture of today. It is a deplorable situation facing small business generally throughout the Nation today for their continued existence.

Senator PROXMIRE. I agree with you wholeheartedly on that.

Senator Dominick.

Senator DOMINICK. No questions.

Senator PROXMIRE. Senator McIntyre.

Senator MCINTYRE. No questions.

Senator PROXMIRE. Thank you very much, Mr. Burger. We appreciate your testimony very much.

I join with the Senator from Alabama that it was a strong statement from a real veteran who understands and sympathizes and believes deeply in the small business program.

Thank you very much.

The hearing will recess until tomorrow morning at ten o'clock.

(Whereupon, at 12:18 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, May 8, 1963.)

delivered from the standpoint of those who oppose it to eliminate
 the force which would have been given to it by the fact that the
 majority of the people are in favor of it.

The House of Representatives, I think, have to deal with a
 majority of the people on this question. It will be the duty of the
 majority to give it their support.

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CONSTRUCTION SET-ASIDES, 1963

THURSDAY, MAY 9, 1963

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

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

Present: Senators Proxmire (chairman), Sparkman, Douglas, McIntyre, and Dominick.

Senator PROXMIRE. The subcommittee will resume hearings on S. 757.

Our first witness this morning is Dr. John Dunlop, professor at the Harvard School of Business.

I think this witness identification is wrong. Dr. Dunlop is the head of the Economics Department at Harvard University. He is listed here as a professor at Harvard School of Business. He is both. He teaches courses at the school of business administration, I think. Do you not, Dr. Dunlop?

STATEMENT OF JOHN T. DUNLOP, CHAIRMAN, DEPARTMENT OF ECONOMICS, HARVARD UNIVERSITY

Dr. DUNLOP. Yes; although I am, as you quite correctly identified me, chairman of the department of economics.

Senator PROXMIRE. Yes, sir.

I sat at Dr. Dunlop's feet when I was taking courses at the graduate school at Harvard and recognize Dr. Dunlop as a real authority in labor economics, and also, I understand, specifically in the construction industry.

In fact, there are few people in the country who can speak with more authority and knowledge on the construction industry than can Dr. Dunlop.

Dr. Dunlop, we are glad to have you here.

Dr. DUNLOP. Thank you, Mr. Chairman. It is good to be here and see you again. I have a very brief statement, Mr. Chairman, and I thought I might run through it very quickly.

Senator PROXMIRE. Fine.

Dr. DUNLOP. And then I would be available for any questions which you or others may choose to ask me.

I think I will skip, in light of your introduction, the first paragraph which describes my background in the industry.

My appearance today is solely as an individual, and I do not represent here the various private and public organizations with which I am associated.

I come to indicate support for S. 757.

Now, with the philosophy, Mr. Chairman, of the Small Business Administration and the act which created it I think most of us in the country would agree. And I would like to quote a paragraph which expresses my agreement.

It says:

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 the Nation.

That statement and sentiment I think we would all agree with. And it is particularly congenial to economists, who are impressed with the importance of free competition and have always been from the time of Adam Smith to date.

I would agree that in many sectors of our economy where competitive forces are weak and need to be reinforced there is a peculiar mission for the work of the Small Business Administration and for their cooperation with contracting agencies.

I do not believe, however, that the Small Business Administration has a fruitful mission to perform in the construction industry in connection with construction for Government agencies. Contract construction for Government agencies is over 100 years old; it is widely diffused throughout the country; it does not depend on research contracts or other special grants.

The set-aside program of the Small Business Administration in the construction industry, in my view, is an entirely unnecessary activity of Government. It is unnecessary because the economic and technological characteristics of this industry assure a very high degree of competition among contractors. The legitimate interests of small business can rely on the competitive nature of this industry rather than upon the orders of a Government agency or agencies which create artificial and unnecessary divisions in the market.

Small business played a significant role in the construction industry long before the Small Business Administration was created. Small business continues to constitute the bulk of the construction industry today, and it certainly will in the future should the Small Business Administration cease to play any role in this industry.

The Small Business Administration is not necessary to insure that small business concerns receive a fair proportion of Government contracts. There are some things which the market does better than any bureaucrat.

The characteristics of the construction industry which lead me to this conclusion I think it important to run through very quickly, Mr. Chairman.

First, the industry is now and always has been comprised of a very large number of enterprises. There has not been a census, by the way, of the construction industry since 1939, and, in my judgment, if the Congress is to expand additional funds affecting the construction industry, one of the most useful things that can be done is to take another census. But the best information we have from three different sources yields the following number of firms:

The Survey of Current Business reports the business population of contract construction as 464,000 firms in 1959; yet, almost 780,000 business tax returns were filed by construction firms in 1959, although only 300,000 construction employers reported to the Bureau of Old-Age and Survivors Insurance. So we have numbers which range between 300,000 and 800,000, depending on different definitions and reporting facilities.

By the way, I note the 1962 report of the Small Business Administration shows that in the 10-year period 1952 to 1962 construction firms grew from 387,000 to 473,000, one of the most rapid rates of growth.

The second characteristic in the industry is that we have a very high rate of business births in this industry. New entrants averaged 13.5 percent of the total in the years 1958 to 1961. This is compared to an average of only 9.2 percent for all industry. None of the major industry categories had an entrance rate as high as construction.

Thirdly, we also have high death rates in this industry. The death rate was 12.3 percent in the construction industry, compared to 8 percent for all industry. Construction firms comprised an average of 10 percent of all firms; yet they furnished almost 15 percent of all discontinuances.

The 1962 annual report of the Small Business Administration shows that construction had 2,703 of the 15,782 business failures reported by Dun & Bradstreet, Inc., in 1962. This figure exceeds the failures in all of mining and manufacturing combined, which has more than six times as many employees as construction.

The fourth characteristic is that construction firms by comparable tests are small. In 1959, 57 percent of all construction establishments had less than 4 employees during mid-March, 77 percent had less than 8 employees, and 91 percent had less than 20 employees.

In this regard, construction firms are really more like wholesale, retail, and service firms than they are like manufacturing or mining.

Fifth, the conditions of entry into this industry are very easy. Workers move from being employees to being self-employed. Foremen and superintendents set up their own enterprises. Enterprises in one branch of the industry move to another. Homebuilders with a few houses grow into larger developers and enter commercial construction. A commercial contractor goes into heavy and highway work. Specialty contractors in some cases become their own general contractors, and vice versa. You have great ease of entry.

Sixth, the financial costs of entry are relatively low in many branches of the industry. Equipment may be rented. Workmen typically furnish their own tools. In many cases owners and clients may advance some capital. You do not have the kind of entry conditions, therefore, that are characteristic of, say, any of the major research- or defense-type industries generally.

Seventh, the scales of operation in the construction industry reach efficient and competitive levels at relatively small size. This is a very important point to an economist. You do not have great economies of great, large-scale operations in many branches of this industry. The technology of most branches of the industry does not require large-scale operations and large capital costs, compared to industry generally, in order to achieve efficient operations.

Eighth, construction enterprises have few fixed costs and move readily from locality to locality and even region to region, increasing materially the degree of competition in a single locality. Work opportunities in any locality will attract bidders from far and wide. That is the record of the industry.

Ninth, the pricing system of the industry increases its competitive characteristics by providing that each new job or even each new contract is typically subject to competitive bidding. Thus, operations do not continue for a long time at prices established by the seller, as you might find in more typical manufacturing industries. The contractor must in the ordinary case face new competition on each new contract he gets.

Tenth, the subcontracting system enhances the competitive nature of the industry in a whole host of ways. Each enterprise often considers whether to perform work itself or subcontract. The arrangements for letting subcontracts has long been a problem among contractors in the industry, as you know. The subcontractor or specialty contractor system increases specialization and provides a norm against which any enterprise can appraise the efficiency of a contractor or its costs.

Eleventh, contractors face keen competition from prospective clients who may prefer to do it themselves. Industrial enterprises, householders, and local, State, or Federal Government agencies materially affect competitive conditions in construction by performing a substantial amount of construction work themselves.

Twelfth, the subcontracting system materially increases on the normal project the number of contractors who have a share in construction operations. It is not as if a prime contract is let to one man and he does typically the whole work. Far from it. Subcontracting increases the role and significance of the small enterprise. There is no excuse for the Small Business Administration not taking into account the volume of work performed by such subcontractors in its administration of set-asides if they are to continue.

Its unrealistic view which measures the size of a contract solely in terms of the prime contractor is at variance with reality and is unfair.

Thirteenth, and finally, the system of setting wage rates by collective bargaining on an areawide basis, as well as the pricing arrangements for most raw materials, all combine to place all contractors on a relatively equal basis as regards the prices paid for labor and purchased materials. This is, therefore, a competitive situation which advances competitive factors in the industry.

Now, my conclusion from this list of characteristics, Mr. Chairman, in the industry is twofold.

First, the market for construction is highly competitive, both in the commonsense way which ordinary men use the term to refer to rivalry and struggle and also in the sense economists technically use the term to refer to the number of sellers, ease of entry, and control over price.

By any usage of the word, this is a highly competitive industry.

Second, small construction enterprises may perform as efficiently and economically as large enterprises in many types of construction. The technology and capital requirements of the industry generally do not provide a clear advantage to the largest enterprises on many

types of construction. Competition and technology protect, therefore, the legitimate interests of the small enterprise without the need for the intervention of a specialized governmental agency or procurement agency taking unusual measures.

I really believe, Mr. Chairman, that that conclusion can be very well documented, and these features of the industry I have pointed to go to the heart of the policy matter that is here before your committee for review.

I might in conclusion just make two other observations.

One is that from where I sit, the practice of the last several years in set-asides has had a disruptive effect on collective bargaining relationships in a number of situations which seem to me unnecessary.

To divide jobs up into small pieces and put pressures that are felt anyway on contract agencies to chop larger projects up into smaller contracts in order to have them set aside is disruptive of traditional collective bargaining relationships widely in the industry.

The second observation I would like to make is that the figures that have been presented on what has happened to the proportion of Government contracts set aside I find somewhat difficult to understand, because they are not drawn up by type of contract or type of work.

To be meaningful, it seems to me, these figures ought to be established by type of project. What is true of levee work might be one story. What is true of dam work is another story. What is true of a missile site is another story.

To lump all these construction figures under one head, it seems to me, means that the figures cannot be very revealing.

I would hope very much that in due course figures would be available by type of construction operation to indicate what the effect has been of the change over recent years in the set-aside arrangements.

I think, Mr. Chairman, that is really all the time I ought to take at this time. I have spoken a few minutes longer than I intended. I would much rather answer questions.

Senator PROXMIRE. Dr. Dunlop, we thank you very, very much. You certainly come to the committee eminently qualified to speak on this subject.

Yesterday we had the head of the SBA and we also had a representative of the General Services Administration speaking to us.

Dr. DUNLOP. Yes.

Senator PROXMIRE. GSA indicated in the statistics they gave us something that confirms what you say. They pointed out that on repair and improvements that small business gets about 85 percent of the contracts, but on new construction small business is getting, even with the set-aside, something around 10 or 12 percent. A very small amount.

Now, what really disturbed me, and I suspect other members of the committee, is the statistics given us by Mr. Horne yesterday, who pointed out that, whereas in 1958 small business concerns were getting 72.8 percent of the dollar value of all military construction procurement, now they are getting only a little more than half that percentage, around 37 percent.

Mr. Horne argued that if we eliminated the set-aside that it is likely that small business' share would diminish to an even lower level.

What is your answer to that?

Dr. DUNLOP. Mr. Chairman, it is precisely that sort of statistic to which I had directed my comment. I do not believe those aggregate figures can be meaningful to the conclusion drawn without having them reveal what is the situation by branch of the industry or type of project.

In a year in which missile site prime contracts constitute a large proportion, for example, of contracts let, it is fairly obvious that contractors who have not had experience in handling \$40 or \$50 million projects are not likely to be qualified to do that kind of work.

On the other hand, in a year in which the total amount of construction involved is largely made up of short sections of a levee, where you may split the job traditionally into smaller segments, or, as you indicate, the repair type of operation, there the proportion of small business would be expected to be high.

My point is that the highly competitive nature of the industry—nothing new, but built over many years—is adequate to assure that small business operations will receive very fair and equitable treatment by branch and type of project.

Until one has broken the statistics down by type of project, by type of operation, I think the aggregate figure is meaningless.

Senator PROXMIRE. Well, as I understand it, the set-asides involve not all but some 80 percent or so of the contracts below \$500,000, between \$2,500 and \$500,000. Now, is it your position that if these set-asides were not provided that small business would probably get most of it anyway?

Dr. DUNLOP. Yes; it is very definitely my view.

Senator PROXMIRE. And that, therefore, the set-aside accomplishes nothing? Then I cannot see why the set-aside really involves very much damage if this is true.

The argument that is made to us by the Comptroller General and by the Defense Department, and obviously both of them have an interest in economy and keeping costs down—

Dr. DUNLOP. Right.

Senator PROXMIRE (continuing). Is that the competition is, just as you say, very severe in this area and the Government probably could not do much better if they permitted everybody to bid.

Dr. DUNLOP. Right.

Senator PROXMIRE. So it is difficult for me to see what damage is done by excluding the bigger firms which gross over \$7.5 million on the average for the preceding 3 years from these particular contracts.

Dr. DUNLOP. Well, let me comment on that.

Senator PROXMIRE. All right.

Dr. DUNLOP. That is a different point than the other one.

Senator PROXMIRE. Yes.

Dr. DUNLOP. Several points can be made quickly. One is that it sets up some quite artificial distinctions. The figure of \$7.5 million average over 3 years, it seems to me, draws a line through a kind of frequency distribution or through a group of firms that are in many respects very similar. You say, "Here is John Jones. You have got \$7.5 million over 3 years; you're out. And here is somebody who has got \$7 million; you're in."

I do not quite understand what is achieved by that kind of division. The averaging over 3 years creates all kinds of problems, in

my judgment, of fellows being up and down in this kind of an industry.

Moreover, you notice in those definitions that dredging, say, as I recall it, is \$5 million, or something less than \$7.5 million anyway. We ordinarily think of dredging as a part of an industry. I do not quite understand the logic by which you set a different definition for dredging than you do for the rest of construction.

And if you are going to start doing it by branches of industry, then I do not see why you do not go ahead and say for the repair work we will set a limit of \$1 million and for some other kind of a job we will set \$25 million.

What is small in construction, it seems to me, very much depends on the type of work, and so forth. And I regard this as a kind of artificial line drawn through competitive forces that really is disruptive to the contractors, to their intercontractor competition, and, as I say, I see no net social gain comes out of it.

I would urge that the committee definitely get these figures by type of project in the future, if we can get these things, in order to appraise just the sort of figure you referred to, Mr. Chairman.

Senator PROXMIRE. I would like to ask you this: You say on page 5 scales of operation in most branches of construction reach efficient and competitive levels at a relatively small size.

Dr. DUNLOP. Yes.

Senator PROXMIRE. Do you say that the \$7.5 million gross would mean that in most types of construction that well below that these firms have reached the optimum size so that they do not need this advantage?

Can you be that specific do you think?

Dr. DUNLOP. I did not put the \$7.5 million figure in there.

Senator PROXMIRE. I know.

Dr. DUNLOP. Because this is the sort of problem I think we need a good deal more information on.

My experience and judgment about the industry would be this: If one were talking about building homes, there would not be any question about it in my notion. If one is talking about repair work of various kinds that you mentioned, I would not have any doubt about it. If one were talking about certain types of commercial work I think that would still be true. If one came to talk about highway construction, I think it might also be true.

Senator PROXMIRE. Now, the way this is administered it would seem to me that, to the extent that small business would get any advantage out of this, it would be cut out of that advantage the way it is administered.

As I understand it—that is, if in the judgment of the procuring office they find that the bigger unit is more efficient and can do this job at a lower cost, a significantly lower cost, then there is no necessity for them to set it aside. They are given considerable discretion here.

If, on the other hand, they find that there is ample competition among small business groups and that there is not any cost to Government, significant cost or difference, then it is set aside for small business.

I take it from your testimony that small business would probably get it most of the time anyway. In other words, it is true that in these big new construction jobs at the missile sites, a big job, obviously

a \$7.5 million or less contractor probably would not be the most efficient size.

Dr. DUNLOP. Right.

Senator PROXMIRE. But they are not going to get it set aside anyway for that kind of work.

Dr. DUNLOP. That is right.

Senator PROXMIRE. Therefore, the set-aside does seem, on the basis of your testimony this morning, to be pretty much of an irrelevancy.

Dr. DUNLOP. And, I would argue, a kind of artificial and unnecessary interference with normal competition in the industry.

I do not believe that it accomplishes what it set out to do. And I would have thought that the normal forces of competition would see that small business did certain types of jobs and that they would not do other types of jobs.

We do not need a Government agency, I think, to make those divisions.

Senator PROXMIRE. On page 6 you talk about the frequency of subcontracting, and this is a feeling that we have but we were not able to get any statistics from either the head of the SBA or from the GSA yesterday on the subcontracting. They did not have any. I think they should get them. I think it is essential.

If we are going to have our subcontracting legislation, which we passed out of this committee 2 or 3 years ago, make any sense, we ought to get reports on how much subcontracting there is.

However, you assert—and you are a very responsible and able man—that there is a great deal of subcontracting. Now, do you have any basis for this?

Dr. DUNLOP. I agree, Mr. Chairman, I do not today have figures in a form that could be useful to you. I assert on the basis of 20 years of experience every day of the week in those 20 years of handling problems in the industry that there is a great deal of subcontracting and a great many problems to both contractors and to labor organizations deriving out of the associated problems of subcontracting.

Senator PROXMIRE. And you feel if the SBA took account of this their statistical picture would be quite different?

Dr. DUNLOP. Quite different. Indeed so.

Senator PROXMIRE. I see. Then I have just one other question. One of the points that has been raised constantly here that concerns a lot of us is that there may be a tendency—certainly we know this has happened at least in some industries before—that a big firm will deliberately bid below cost and cut their prices to such an extent that they literally drive their small competitor out of business.

This can happen in a retail establishment which has a specific location.

Now, in view of your testimony this morning, I would gather this would be almost impossible to the construction business on any great scale because of the mobility of the contractor and the fact that it would not seem very logical with 300,000 to 800,000 firms for a firm to decide to lose money for the purpose of driving some small firms out of business. Is this right or not?

Dr. DUNLOP. I think your conclusion is essentially right, and I would put it in my own words just a little bit differently than the chairman.

That is, in an industry which has as much freedom of entry as this, it is not like you have a fixed location or a fixed kind of market where somebody can try to get rid of a given competitor or two and then one's position thereafter may be expected to be improved.

There you face the fact that elimination of A or B still opens the floodgates for all kinds of other people to come in and fill the vacuum because of this high mobility.

Second, from where I sit, I must for completeness also make this point to you: The whole question of what is below cost is in this industry, as in any industry, a very difficult problem to define. People may shave their margin of profit included in a bid under strong competitive forces when particularly they have been long without work. When that shaving of profit gets to the point that it is actually a loss, it may become a very difficult point to estimate. I am sure you would concur in that.

But the possibility of saying, "I am going to temporarily take a loss to get rid of competitor A or B or C" seems to me to be a very futile gesture because of the high degree of entry which this permits and the high business births, and so forth, that I pointed out, where other firms would very quickly come in to the field from a whole variety of sources.

I think that the point of view that I am expressing here this morning, Mr. Chairman, is the point of view not only which I express as an academician but it is the point of view which practical people to my knowledge in the industry, the preponderant people in the industry, as I know them, on both sides, would I think very definitely concur in, that it represents a kind of common view in this industry.

I think myself it is quite significant that there has never been any extended consultation with people in the industry about this matter. I am not saying they may not have been afforded an opportunity to. The point is that the leaders in the industry on both the contractors' side and on the union side taken as a whole are opposed to this present arrangement and have also, I think it is fair to say, never been involved in discussions. And you cannot do that and make it work in an industry that is, in my judgment, as diffuse as this one is. I think that has been an unfortunate facet of our present problems.

Senator PROXMIRE. Thank you. Senator Sparkman.

Senator SPARKMAN. Doctor, I may say that I have followed your statement—I read it in its entirety—with a great deal of interest. You have made some very telling points, particularly in your discussions here.

I agree with both you and the chairman that if subcontracting figures were included we would probably get a substantially different picture. Well, we might. I would not say we "probably would," because subcontracting, of course, generally, the big part of it, comes in the massive contracts. However, this legislation does not relate to subcontracting.

Now, we do have another provision in law with reference to subcontracting, to encourage subcontracting. This legislation, which was passed by the Congress after due deliberation, pertains only to prime contracts.

Dr. DUNLOP. That is right.

Senator SPARKMAN. I want to say that there is a great area of agreement with what you say about open competition. As a matter

of fact, the Small Business Committee of the Senate every year since its formation in 1950 has filed a unanimous report with the Congress, Democrats and Republicans alike. We have functioned as a non-partisan committee. And from the very first we took the attitude that if there would be open competitive bidding for all business small business would take care of itself. We believe that. But that does not happen to be the case. It is not the case in construction. There is not open competitive bidding in construction. A great deal of construction is negotiated. Is that not true, particularly in these bigger jobs you have such as you mentioned? Missile sites, for example?

Dr. DUNLOP. Well, Senator, my impression of governmental construction in recent days is not that. My impression is that, partly as a result of policies of Congress, every procurement agency I know has been trying to let as high a proportion of its construction work out under what we call fixed bids rather than negotiated contracts as it possibly can.

Senator SPARKMAN. That may be true, and yet you and I know that the big jobs which take up a big part of the work are increasing. And I think your analysis of that figure we cited to you in 1958 is exactly right. It is the change that has come about in the type of construction. I pointed out yesterday we see the same thing in procurement where weapon systems are involved and such as that. Small business knows it cannot get prime contracts in that field.

Dr. DUNLOP. Yes.

Senator SPARKMAN. And I think that is exactly the reason that Congress devised the system of set-asides so as to provide that in those particular areas in which small business was well capable of functioning that it should be given a preferential status.

I take it that you do not believe there is any good that comes out of set-asides in the construction industry, in the construction contracts?

Dr. DUNLOP. Senator, my honest conviction is that I regard it as unnecessary, and I think that view is shared, if I may say so, by the substantial part, by the largest fraction by far, of the union and employers, construction contractors, in the industry; yes.

Senator SPARKMAN. Well, now, this is digressing just a little. What is your attitude with reference to the set-aside program generally?

Dr. DUNLOP. Oh, on that I think I did not go into it, Senator, because I thought it was beyond the scope this morning, except at the outset you recall I did indicate that I was quite in sympathy myself with the general objectives of taking certain sectors of our economy where, as I used the word, competitive forces are "weak" and need to be reinforced, where I would very much support the set-aside program.

Senator SPARKMAN. I just wanted to be certain, because I felt you did put your emphasis almost entirely on construction.

Dr. DUNLOP. Entirely.

Senator SPARKMAN. So I wondered how you felt about the other.

Dr. DUNLOP. I share your view.

Senator SPARKMAN. Of course, I know, as one who participated in the original legislation, that when Congress provided the set-aside program it intended for it to apply to all Government procurement of every kind, construction or otherwise. And this amendment was inserted in 1958 as you recall to clarify a doubt. The Comptroller General never did actually rule I believe that construction was not

included but did suggest a doubt. Therefore, to clarify it, Congress inserted the little words in parentheses.

By the way, I gather you probably might separate even the construction. You remember it says "construction, maintenance, and repair." Would you make any difference as between construction and the other two, maintenance and repair?

Dr. DUNLOP. Well, I had not really thought as much of it. Most of my statement was directed toward construction. As I understand it, the scope of construction is a matter of a good deal of controversy, as you know, Senator. I was primarily thinking of work performed by contract and let out by contract to contractors engaged in construction and performed by their building trades counterparts.

Senator SPARKMAN. Of course, as Senator Proxmire pointed out, the testimony before us yesterday was that a much higher percentage of the maintenance and repair contracts went to small business.

Senator PROXMIRE. GSA I think testified something like 85 percent.

Senator SPARKMAN. Eighty to eighty-five percent.

Dr. DUNLOP. Yes. And, you see, if you adopt a dollar figure like \$7.5 million, that will cut at different points at different branches of the industry.

Senator SPARKMAN. Now, of course, you touched something there that is a problem for us all the way through the Small Business Administration.

Dr. DUNLOP. I am aware of that.

Senator SPARKMAN. That is defining small business. We have never done that satisfactorily. As a matter of fact, up until last year the maximum was an average of \$5 million a year, and it was changed last year, I believe after a hearing to which the contractors were invited, and it was changed to the average of \$7.5 million in order to enlarge the field.

And I suppose too we expect them to grow. As a matter of fact, I can point out in my own State some rather large contractors today—I could name some—who 5 years ago called on me to help them get their first contract as a small business firm. They did well on the job. They were given another one and did well and kept improving until today they are out of the small business category.

Dr. DUNLOP. Right.

Senator SPARKMAN. I can think of many in the manufacturing industry that have had a similar experience.

Dr. DUNLOP. Surely.

Senator SPARKMAN. You know, of course, that there has been a continuing decline in the proportion of small business participation in Government procurement of all kinds. Back a few years ago it was up to 25 percent. Our committee—I am speaking of the Select Committee on Small Business—was not satisfied with that, and we kept urging an even greater percentage. But at least we felt that the very minimum ought to be not less than 25 percent. Now it is down to 15.8 percent.

Dr. DUNLOP. Yes.

Senator SPARKMAN. It has been largely the result of our prodding for a more equitable distribution of this business that these things have come about.

By the way, you speak in your paper frequently of the SBA setting aside and doing so and so. You know, of course, that SBA does not do that?

Dr. DUNLOP. Yes.

Senator SPARKMAN. The Defense Department and GSA do it.

Dr. DUNLOP. Yes.

Senator SPARKMAN. Now, I notice you referred to the labor disruption. We have had a good bit of testimony on that. We did have last year. We have had a small amount this year. But I understood the evidence yesterday to point up pretty clearly that this was not a clearcut question, that probably about half, both big and little, use union labor and about half use nonunion labor.

I would not give that figure with any accuracy, but it was suggested generally.

Senator PROXMIRE. If I could interrupt, I think last year we tried hard to establish that figure without much success.

Senator SPARKMAN. That is correct.

Senator PROXMIRE. And it was confusing in the testimony yesterday. I hope before this testimony is through we can get some more reliable information.

But I know that the people who favor this bill feel very strongly that organized labor is far more common with big contractors.

Senator SPARKMAN. That may be entirely true, and yet it does not show up necessarily in these contracts.

By the way, Doctor, you are familiar with the Smaller Business Association of New England, are you not?

Dr. DUNLOP. I am not sure I am, Senator.

Senator SPARKMAN. Well, there are a good many small business associations throughout the United States, but the New England association was one of the earliest, and we have regarded it as one of the most efficient and one of the most up to date.

It is the one, for instance, that gave the initial impetus to small business investment legislation. It was instrumental in organizing the development associations in the different States in New England.

They were here the other day. They come every year, I suppose 50 or 60 or 75 of them. They met right in this room with members of the Small Business Committee of the Senate, and they made a presentation to us of different things, but one gentleman discussed the subject of procurement, and he dealt with this question of set-asides.

He very strongly endorsed it and urged it, urged its continuance, as being necessary to help small business get an equitable share.

I just thought you might be interested—

Dr. DUNLOP. I am interested.

Senator SPARKMAN (continuing). In the attitude of the association, which is one of the strongest associations in the United States.

Dr. DUNLOP. Now that you mention it, it may very well be that I do know the chairman of it. I will look up his statement.

Senator SPARKMAN. I am sure you do. You may just not recognize it. That is all, Mr. Chairman.

Senator PROXMIRE. Senator Dominick.

Senator DOMINICK. Mr. Chairman, I want to preface my questions by saying it is refreshing to have a Harvard economics professor mention the words "Adam Smith."

I recently had a letter from a Harvard economics student in which he indicated if I was no naive as to mention Adam Smith in any letter at all that not only were the voters misadvised in sending me here but the country was in "parlous" shape, which I think is the correct word. So it is refreshing to have you here. I was interested in your comments on this census problem on small business.

Dr. DUNLOP. Yes.

Senator DOMINICK. Do you think that it might be advisable to have such a census before we take action on a bill of this kind?

Dr. DUNLOP. No; I think I would like to see action on the bill at the current session. To take a census of construction I think would take, Mr. Chairman, a good many months of preparation. There has been some discussion about it inside the executive branch of Government I know, and in the Commerce Department more particularly.

Part of my reason for putting that phrase in—I really had two thoughts in mind—was that I honestly believe that in many, many matters relating to construction the Government agencies are very ill informed. This is partly the fault of the industry in my judgment but it is also a part of the fact that people tend to think in terms of manufacturing or retailing, and what not, and this industry has such unique characteristics that an awful lot of things really do not fit in. Our labor laws in many ways do not fit.

We do not hold elections in construction, for example. I remember when I was a member of the Wage Stabilization Board in the Korean period the only industry we had to set up a separate commission for—and in principle I was opposed to separate commissions—was construction, because of the special area rate sort of thing.

My thought was that in the construction industry, if the Government wants to spend some further funds, one of our principal needs is a census of this industry, which, as I say, we have not had since before the war.

Senator DOMINICK. The Government may want to spend some further funds. I certainly do not. But there are some things that might be useful to find out.

It occurred to me maybe we might be able to compile these from existing reports that the agencies already would have.

Dr. DUNLOP. Well, I have suggested too, Senator, that I thought that a breakdown of existing data by type of project was essential to any appraisal of this problem. My own judgment about it is based, as I say, on fairly intimate experience.

Senator DOMINICK. I gather that the general tenor of your statement—and correct me if I am wrong—is that the set-aside program is not particularly doing any harm but it is not doing any good. Is this—

Dr. DUNLOP. Well, I agree with the second part. The first part of it, I would say that I do think that by drawing these dividing lines on the one hand there are two kinds of harms that are being done. Let me state it that way.

One is the harm of dividing competition among one contractor and another on a basis which has no part in experience or no part in reality, just because somebody happened to pick a figure of \$7,500,000, which pays also no attention to the highly competitive subcontracting arrangements which exist in the industry. That is one harm.

The second harm is that the practical effect of it out in the country is that by taking some of these jobs which might otherwise be let as a single prime contract and slicing them up into smaller projects in order that a procurement agency fellow may feel that, well, he has met his quota, that he is doing something which the Small Business Administration would be happy about, that tendency is disruptive of labor-management relationships in this industry. In those two respects I regard it as harmful.

Senator DOMINICK. Why is it disruptive? This is one of the problems that I wanted to get to.

Dr. DUNLOP. Let me put it this way: If a job were let as a single job, there would be a tendency for it to be bid and work to be performed on essentially a uniform basis. By breaking it into three or four different bites, what happens is that you get different conditions established on one contract from another contract.

You may have different wages. You may have different fringe benefits. You may have different labor policies. And the net effect of that is to create turmoil on a job.

On some of these projects where the Government is much concerned to see peaceful conditions in order to expedite jobs of high priority, in my experience this is and has been a difficult situation.

Senator DOMINICK. You are not then thinking in terms of union relationships? You are thinking in terms of general labor relationships?

Dr. DUNLOP. I was thinking in the most general form of general labor relations. I have no hesitation in saying that the union-nonunion aspect of it is one facet of it; yes.

Senator DOMINICK. Is this based on your thinking that there are more small contractors than large that are not union?

Dr. DUNLOP. I would assert it fairly strongly that the proportion of contractors of a larger sort that are union is greater than the proportion that are nonunion. And in the smaller contractors, depending in part on branch of industry and locality, there would be a higher proportion of nonunion contractors among smaller ones; yes.

Senator DOMINICK. Then does this not fall apart when you refer back to your subcontracting if you say that small business is going to be just as well protected without this because of the subcontracting practices? Does this mean that you are going to have a contractor choose only union subcontractors?

Dr. DUNLOP. No, I think it works this way, rather, Senator: In an area where the union and nonunion problem often tends to be concentrated by locality and branch of trade, you might have a given community and in that community you would have, let's say, the electrical contractors pretty well highly organized, and this would be true whether they were large or small in that particular branch of the industry.

You would have another community in which, by and large, you would have a situation where you might find that a particular group of subcontractors were tending to be nonunion, or you would find some like certain heavy highway contractors that would be nonunion.

There would be a greater tendency for the degree of unionization to be associated with a branch of a trade or an industry than necessarily with size within the same locality. That is my point.

Now, there is some of that, but the concentration would be largely by branch of trade and by locality. In certain cities, the subcontracting groups as a whole would be nonunion, you see. Certain branches of the trade would be nonunion.

Senator DOMINICK. I think we are kind of dealing with a "never never" world, then, because we do not really know what the story is on that, do we?

Dr. DUNLOP. Well, it is not quite that bad, Senator. We do have figures in some branches of the industry, in some localities. A number of the associations, over the years, have made surveys of this matter, and those are available on an overall kind of basis.

I think it is fair to say that I cannot give you any authoritative source other than the general BLS figures of what proportion of the industry tends to be union. And that varies somewhere between 80 and 90 percent, which is the figure they normally give.

Senator DOMINICK. The point I am making—I am not sure we are disagreeing at all; maybe we are—is that in the set-aside program by which small contractors are given the right to bid on a particular prime contract they in turn subcontract that out, and, in some cases, to the large contractors. I have not followed this through because we do not have the information on it.

In like manner, if we did not have the set-aside program, and the large companies got the majority of the business and then subcontracted that to the smaller ones, I cannot see that we have got any differential as far as the union situation is concerned.

I just do not see how it could be disruptive one way or the other. At least it does not seem to me we have the figures to prove it one way or the other.

Dr. DUNLOP. I would agree that we do not have the figures to prove the overall situation. I would say, from my own experience in dealing with certain vital jobs in the last several years, this factor has been disruptive on several very important jobs.

Senator DOMINICK. That is all, Mr. Chairman.

Senator PROXMIER. Senator McIntyre, do you want to go ahead first?

Senator MCINTYRE. I was very happy to hear Senator Sparkman's comment on the New England Smaller Business Association. I had known of their activities and had an opportunity to listen to their presentation and thought it was very ably done. I have one question for Professor Dunlop.

My home is New Hampshire, and, as you might expect, New Hampshire is full of small businesses by this definition. And I wondered if you do not feel that the policy that has been set into this law acts as an encouraging factor to interest our type of business in New Hampshire to become acquainted with their opportunities of procurement whereas if it was not in existence we might get apathy and disinterest.

Dr. DUNLOP. Well, Senator, I have already said, in response to a question from Senator Sparkman, that with respect to the general philosophy of, the policy of encouraging small business in competitive branches of our economy where competition is weak, I agree that it needs to be reinforced.

I am, however, of the view that in the construction industry, because of its highly competitive conditions, entry conditions, and so

forth, which I have summarized, I do not think that the policies of the Small Business Administration have tended to substantially affect the advantage of small business in the construction industry one way or the other.

Senator McINTYRE. That is all.

Senator PROXMIRE. Senator Douglas.

Senator DOUGLAS. Mr. Dunlop, I regret I was not able to hear your testimony. I have read it since I came in. I suppose there is no one in the country who knows as much about the building industry not connected with the industry as you do, and your testimony is very illuminating.

There are two or three questions which I would like to ask. The first is this: In the last few years we have changed our policy on constructing post offices. They used to be built out of appropriations made by the Federal Government. They were owned by the Federal Government.

Now the post offices in the smaller towns and cities, as you probably know, are constructed by private individuals under a leasing arrangement.

Dr. DUNLOP. Yes.

Senator DOUGLAS. Now, I would like to ask: Does the small business set-aside apply to these small post offices individually owned, leased by the Government, or does it apply simply to buildings owned by the Government?

Dr. DUNLOP. Senator, I really do not know. I had some discussion with somebody about that recently. I had some discussion with some of the people in the Post Office Department recently about this matter, when I was over seeing them, Senator, and it was my impression that this is not public construction because of it, and it did not apply, therefore, to it.

Senator DOUGLAS. So, therefore, there is no set-aside?

Dr. DUNLOP. That is correct.

Senator DOUGLAS. Now, the next question I would like to raise is this: In the construction of major buildings in the cities where the large firms act as general contractors, are you sure that there is competition in bidding?

Dr. DUNLOP. Are you talking about governmental projects?

Senator DOUGLAS. Yes; big post offices, big Federal buildings.

Dr. DUNLOP. I have not really looked into the Post Office building arrangements, Senator. Maybe I ought to.

Senator DOUGLAS. Federal buildings.

Dr. DUNLOP. Your question suggested perhaps it might be useful for me to do so. I am much more familiar with the bidding arrangements with respect to, say, a normal commercial building, where somebody wants to build an office building or a structure of comparable size and characteristics. There, I am familiar with it and have looked into it, and we do have a very highly competitive arrangement.

Now, it is true, as you know, that certain companies may enter into what are essential long-term informal relationships with a builder whom they get to know, what we call institutional builders, and may have what might be called an inside track. But when, as is most typical, people let a contract out to general bidding, then my impression is that you really do have very keen competition in both the economic

sense of the word, Senator, as well as in the normal sense of rivalry and so forth.

I am not familiar with the special arrangements that may be in use in the Post Office. I am quite familiar with the kind of thing the Corps of Engineers lets contracts for, which is a favorite subject of yours I am sure, and the bidding arrangements that go into that area.

Senator DOUGLAS. Well, I have not followed developments in New York for a good many years, but at one time there was very clear evidence to indicate that the contractors in the building business in New York were in a price ring together. There was very little competition on bidding and the prices generally were quite high.

Are you still connected with the industry or are you still the chairman of the impartial board of arbitration?

Dr. DUNLOP. No. I am connected with the industry, Senator, not as chairman of the jurisdictional board. You are speaking of the board where for 10 years I was chairman that I referred to at the outset as handling all jurisdictional disputes in the industry. Yes, I gave that job up in 1957 to go to Geneva for a year.

I am chairman of a body I meet with each week more or less comprised of the top labor and management people in the industry to work on problems of efficiency, problems of that sort, technical change, problems of the body we call the Construction Industry Joint Conference.

It is one of the kinds of labor-management continuing study groups, Senator, that you hear a great deal about these days.

Now, your last question referred to really what as an economist I would call bid pools and policing bid pools.

Senator DOUGLAS. The term was "bid rigging."

Dr. DUNLOP. Yes. Well, I am, of course, familiar with the history of that in this and some other industries, and there is no doubt that the history of this industry has had cases of that sort. I am sure you are equally aware of the fact that any such case caught is a violation of the antitrust laws.

Senator DOUGLAS. But can you depend on the Department of Justice rigorously to enforce competition? Is this your sole defense?

Dr. DUNLOP. No, certainly not, Senator. My principal defense or my principal argument about the competitive character of this industry goes to the inherent characteristics of entry, of size, of scale, and so forth, that I have spelled out here.

Now, let me just comment, though, since you quite rightly, I think, point to this past in the industry and maybe in some cases the present—I do not know—that to be meaningful, I think you would agree with me, those cases would apply to projects of some considerable size.

Senator DOUGLAS. Yes, indeed,

Dr. DUNLOP. This would not be the kind of situation in which a job in the neighborhood that you are talking about would likely be involved.

Senator DOUGLAS. I understand. But now the Patent Office is asking for a \$40 million building. I suppose nearly all these buildings along Constitution Avenue and Independence Avenue will run in the \$40 or \$50 million range. And we are putting up a Federal building in Chicago at a cost of \$76 million. There is a project for a new mint in Philadelphia which probably is needed. I mean there are a lot of costly Government buildings going up.

Dr. DUNLOP. Indeed.

Senator DOUGLAS. And this issue is an important one, especially since, as you say, the smaller post offices are outside the field anyway, since they are regarded as private construction.

Dr. DUNLOP. Well, let's take a building of that size. I take it this would not be, at least under the existing regulations, a building that would be set aside by the procurement agency involved as a job left for small business, would it?

Senator DOUGLAS. Now, that raises a question.

Dr. DUNLOP. But from where I sit, a large number of really quite small contractors typically would work on a building of that size with respect to a variety of subcontracting operations, and this derives in no way from a Government set-aside. It derives from the nature of the industry and the nature of its competition.

Senator DOUGLAS. Well, let's follow that up. Are you saying, therefore, that in practice the set-aside provisions apply (a) to subcontracting and (b) to maintenance and repair?

Dr. DUNLOP. No. I am saying that the set-aside applies to contracts of a certain dollar volume. Above that they do not apply.

Senator DOUGLAS. What is that limit?

Senator PROXMIRE. \$2,500 to \$500,000 is the size that is ordinarily considered for set-aside. SBA can ask that bigger projects be set aside occasionally. But certainly anything in the area of \$10 million, \$40 million would not be considered.

Dr. DUNLOP. So the range of your question, you see, Senator, is really—

Senator DOUGLAS. Then this is really for the middle-sized cities?

Dr. DUNLOP. Well, I cannot recall a post office that—well, I guess there would be some post offices that might be up to \$500,000. I do not really know that much about them. But certainly a post office in any city of any metropolitan area would clearly be in excess of that.

Your questions, in other words, as I see it, are interesting questions, Senator, but I think they deal with a range of problems which are beyond the scope of the problem in the bill and beyond the present set-aside program.

Senator DOUGLAS. Well, the Metcalf bill provides for eliminating the set-aside in case of maintenance, repair, and construction.

Dr. DUNLOP. Yes.

Senator DOUGLAS. I take it that you are testifying for the bill.

Dr. DUNLOP. Yes.

Senator DOUGLAS. Do you regard the present requirement as onerous primarily in construction or primarily onerous in maintenance and repair?

Dr. DUNLOP. I think I answered that in response to one other question.

Senator DOUGLAS. Then I am sorry. I came in late.

Dr. DUNLOP. And my answer was that my testimony went mainly to the construction side with which I was most familiar, and work performed really under contract.

This problem of what is maintenance and what is construction, as you know, is a very difficult question and at times controversial.

I was thinking of work performed by contract, essentially of a new construction and alteration kind of operation.

Senator DOUGLAS. Well, the question comes in my mind, then, how important construction is at present in view of the fact that the post office is now adopting a different policy than it did in the old days when it appropriated directly. And what we have now in cities of considerable size is construction by private concerns and leased to the Government. I think of a city of 50,000 in Illinois where the post office was built under these conditions where formerly the post office had been built under direct appropriation. It displaced this post office.

Now, just how many buildings are there up to half a million dollars constructed by the Government? I think when you have direct Government construction they run into the millions.

Dr. DUNLOP. One problem, Senator, I think I should call to your attention is that these are contracts of that size. They are prime contracts. And prime contracts are not always necessarily equivalent to a building or a structure.

It is very often the case that a site will be broken up into a number of separate prime contracts. And the size figures that the chairman has mentioned referred to the size of the contract, not to the ultimate total value of the structure or the project as a whole.

This is one point.

You may have a number of prime contracts, each of \$500,000, on a given site.

Senator DOUGLAS. Well, is this customary? Or is not the general custom to have one prime contractor who makes a series of subcontracts?

Dr. DUNLOP. It is becoming much less customary than it was—and in part because of the set-asides, Senator.

Senator DOUGLAS. Would you develop that a little?

Dr. DUNLOP. Well, the traditional pattern of construction would have been for a single contract in some branches of the industry. And there were separate prime contracts in some cities and States for some specialty groups, like the electrical work, as you are aware, and plumbing, and so forth.

But on many of these, say, missile site projects, space sites, and so forth, there is quite a tendency for the Government agencies involved to let a contract for clearing this particular piece and then for the dredging business and then for this and then for that, until you have a whole series of separate prime contracts, which years ago might have been let to a single contractor to perform a lot of work.

Senator DOUGLAS. You mean they subdivide in order to have the small business set-aside apply to them?

Dr. DUNLOP. It would be my testimony that in my experience that is one of the considerations, yes, which lead the procurement agencies to do so.

Senator DOUGLAS. I had never thought that the Government was so anxious or the Government officials were so anxious to promote small business that they would subdivide the contract into a series of subdivisions in order that they might give a portion of it to small business.

In general it has been necessary for the legislative branch to force the administrative agencies to observe these. In short, you think that there will be sufficient competition if this provision which now governs is removed?

Dr. DUNLOP. Yes; this is my testimony, Senator, and also my conviction.

Senator DOUGLAS. Have you any evidence on relative costs of construction when carried through by so-called big firms or small firms? What is the cost differential?

Dr. DUNLOP. Part of my answer to that, Senator, would be the one I gave earlier, that we do not have adequate overall figures in this industry to deal with this. I would very much like to see that sort of study made. We just do not have that information. And the influence of size and scale upon costs, a subject that you would particularly appreciate. We do not have the types of studies made that we do in other industries where we can take a power generating station and say what is the effect of size upon cost per kilowatt-hour, and so forth. That sort of thing we do not have.

There are a number of specific instances which individual contractors can testify to. My own view is that for many branches of the industry efficiency is reached at a relatively low size. In other words, you do not have to have a very large enterprise in most branches of the industry in order to get efficiency, low cost on an equal competitive basis. I think that would be self-evident.

Senator DOUGLAS. I suppose in the large buildings though you do need gigantic cranes.

Dr. DUNLOP. Yes; although I have pointed out in my statement that in lots of branches of the industry equipment is rented.

Senator DOUGLAS. No further questions.

Senator PROXMIRE. I would like to ask just a couple of very quick questions from what you have testified to. Dr. Dunlop, did you say that 80 to 90 percent of this industry is unionized?

Dr. DUNLOP. I said that the last figures that I had seen from the Bureau of Labor Statistics suggested that 80 to 90 percent were.

Senator PROXMIRE. Does that mean 80 to 90 percent of the people who work in this industry belong to unions, or does it mean 80 to 90 percent of the 300,000 to 800,000 firms are union firms?

Dr. DUNLOP. Eighty to ninety percent of the employees.

Senator PROXMIRE. Employees?

Dr. DUNLOP. Yes.

Senator PROXMIRE. Well, this would imply, would suggest that possibly the bigger firms are more constantly or consistently unionized than the small ones.

Dr. DUNLOP. I think that would be a correct impression; yes.

Senator PROXMIRE. Would you say that the burden of proof in this whole area should be on those who want to set aside contracts and prohibit some firms from bidding and interfere in this way with the opportunity of firms to go after Government business? Do you think that is a fair assumption to take or a fair position to take?

Dr. DUNLOP. Well, you are using language, Senator, that I would really prefer not to comment on as an arbitrator.

Senator PROXMIRE. You see, the difficulty in this: We are so devoid of facts; we do not have facts on subcontracting; we do not have even very satisfactory facts all across the line on prime contracting. And we are missing facts on costs. We are missing facts on the effect this may have on union and nonunion workers and on working conditions, and so forth.

Under these circumstances I am concerned with a burden of proof here to some extent, and it would seem to me that those who wished to set aside contracts and say, "You cannot have certain American industry bidding for it," those who favor that position, should be able to establish it and should come in with their figures to prove it.

Dr. DUNLOP. Well, I would agree with that, I think, if I looked at it historically. Let me handle your question this way, Senator: The contracting associations in this industry, by their nature, have a very high membership among people who are small enterprises by any measure you wish. Now, I think it is fair to say from what I know about it anyway that there never in my experience was any great hue and cry among the contractor groups in the country for the program in the first place.

Whatever are the virtues, and I think they are high, for a program in a great many defense-type procurements where research and other costs are very important, new-type industries, it seems to me that there was no showing in the first place made that there was a high distortion, so to speak, of contracts to large firms and that small business did not have a legitimate fair share of construction contracts to start with.

My own view is that one ought to restore that situation, and I would join with anyone else who wants to get additional information about this industry, because I think it is long overdue.

Senator PROXMIRE. Do you want me to yield to you, Senator Sparkman?

Senator SPARKMAN. Yes. Just in reference to your burden of proof, I do not agree with the attitude taken by the chairman.

Senator PROXMIRE. I asked a question. I did not necessarily reflect an attitude.

Senator SPARKMAN. Well, you made some similar statement yesterday.

Senator PROXMIRE. I said, "Would you say?"

Senator SPARKMAN. I know. But yesterday you intimated that the burden of proof was upon those trying to maintain the set-aside. I do not agree with that at all.

My experience in practicing law is that this is the law—the set-aside. It is on the statute books. A bill has been introduced to repeal it. The burden of proof is upon the would-be repealers. Now, that is just a simple principle of law and of logic.

But may I say in this connection—

Senator DOUGLAS. May I say in defense of the chairman you remember Mr. William H. Seward appealed to the higher law. And I take it that—

Senator PROXMIRE. The Senator from Illinois has put it in a more generous way than I would put it. I would say it depends on whether you would rely on law or morality, and they often tend to conflict.

Senator SPARKMAN. May I say in that connection, digressing a little, I certainly would agree with what the doctor says regarding the need for more information on this. I would think it would be well perhaps to ask the Census Bureau or somebody, whoever would be the proper agency, to answer some of these questions for us, to get the answers to them.

I do not know that the information has ever been collected. If it has not, then we might ask them to collect the information for us.

It seems to me that it is something we need. I certainly would not advocate as a useless or futile thing. It seems to me it might be well for us to ask that a study be made as has been suggested here.

Senator PROXMIRE. I think Dr. Dunlop has taken the position that we should not wait until we get a census before we pass the bill. But I can understand the argument we should.

Senator SPARKMAN. I am willing to get all the light we can, because I believed in the legislation when it was originally enacted.

Senator PROXMIRE. Let me say, Doctor, there is a distinct difference here that you have tried to emphasize. I do not think we have all accepted it here on this side of the table, but I think we should. And that is that you feel that set-asides are appropriate where competition is weak.

Dr. DUNLOP. Right.

Senator PROXMIRE. Where it is weak.

Dr. DUNLOP. Right.

Senator PROXMIRE. Here you have a situation where competition is strong.

Dr. DUNLOP. Right.

Senator PROXMIRE. Nobody has questioned the fact that competition in this industry is strong.

Dr. DUNLOP. Very strong.

Senator PROXMIRE. And therefore you say that set-asides are not essential.

Dr. DUNLOP. Yes.

Senator PROXMIRE. You also, I take it, feel this would not therefore be the first step in knocking out the other set-asides?

Dr. DUNLOP. No. And I would further argue that it is not unusual in Government administrative arrangements to make rules different in the construction industry from other industries.

All through the Government it has been necessary to devise special rules and regulations, because the variable sites on which construction work is done do not fit the normal pattern of employment relations and manufacturing type activity.

Senator PROXMIRE. One final question, and that is this: Frankly, I think the most persuasive argument in favor of the set-aside is the assertion which may or may not be true that the set-aside program has resulted in the Government breaking up some of their big contracts and giving small business an opportunity to bid.

And it seems to me unless there is a showing that this increases the cost, this is something that is good. If small business has an opportunity to compete for these smaller subdivided contracts, it seems to me that is excellent. It is good. What is the matter with it?

Dr. DUNLOP. Did you ask me a question, Senator?

Senator PROXMIRE. Yes.

Dr. DUNLOP. Well, it seems to me that artificially dividing up a project into separate prime contracts is really quite inefficient, quite at variance with the notion of responsibility for a job, and—

Senator PROXMIRE. If I could just interrupt, it seems to me this is a responsibility of the procuring office, the Defense Department and the Comptroller General and others who have a deep interest in keeping costs down.

If there can be any showing that this is inefficient, that it costs more, then there is no question you are right. But it seems to me there should be some case made.

Dr. DUNLOP. Well, let me, then, put the point that way.

Senator PROXMIRE. It could cost less if you break it up and have more firms willing to come in and bid? It could cost less, could it not?

Dr. DUNLOP. It might be less if there were the kind of showing that there had been a deficiency of people bidding or there had been some kind of bidding arrangement which had precluded competition. But I would have said that it would be very widely the consensus of people in the industry that to take contracts and break them up artificially and to put in a situation where you have different responsibilities for roads, different responsibilities for labor relations, different responsibilities on a single site—and I would have thought that most any practical construction person from whatever side of the table he came would agree—that that was a less efficient way of doing business.

Senator PROXMIRE. Thank you very, very much, Dr. Dunlop. You have done an excellent job. We have all been impressed, I am sure, and this is very helpful to us.

Dr. DUNLOP. Thank you very much, Mr. Chairman, for your courtesy.

Senator PROXMIRE. Our next witness is Mr. Paul A. Askew, along with Mr. William McSorley. Mr. Askew is assistant to the general president of the International Union of Operating Engineers.

We are very happy to have you gentlemen.

STATEMENT OF PAUL A. ASKEW, ASSISTANT TO THE GENERAL PRESIDENT, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND WILLIAM J. MCSORLEY, ASSISTANT TO THE PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

Mr. ASKEW. Mr. Chairman, my colleague, Mr. William McSorley, is assistant to the president of the building and construction trades department and is appearing for the president of the building and construction trades department, Mr. C. J. Haggerty.

His statement is very brief, and with your permission I would like to ask if he might make his statement first.

Senator PROXMIRE. All right, sir. You go right ahead.

Mr. MCSORLEY. Thank you, Mr. Chairman.

My name is William J. McSorley. I am assistant to the president of the Building and Construction Trades Department of the AFL-CIO. The building and construction trades department is a federation of 18 national and international unions engaged in the building and construction industry, having State and local councils in each of the 50 States and some 535 cities throughout the country.

We have at the present time approximately 3,750,000 members in some 12,000 local unions.

We represent a highly skilled labor force in the largest industry in this Nation, the largest industry in dollar volume and the largest in the number of individual employers.

I might point out here also that we have the highest rate of unemployment of any segment of our economic and industrial society. The seasonally adjusted rate in the construction industry for March 1963 was 18.3 percent.

Despite the outlook for a record year in 1963, we do not expect this rate to fall below 12 percent.

Senator PROXMIRE. May I interrupt? Seasonally adjusted?

Mr. MCSORLEY. Yes, sir.

Senator PROXMIRE. Still 18 percent?

Mr. MCSORLEY. This is one of the most pressing reasons for my presence here this morning. We are most appreciative of the opportunity to appear before this committee and state our support of S. 757.

On June 8, 1962, Mr. Haggerty, president of the building and construction trades department, testified at length on behalf of a similar bill, S. 3096, before this committee.

I might add here that testimony answered some of the questions raised this morning. I have a copy of it here if you would care for me to point that out later.

Mr. Haggerty, president of the building and construction trades department, addressed a letter to the chairman of this committee on May 1, 1963, outlining the department's current views on this measure and urging its adoption.

As late as yesterday, May 7, 1962, the executive council of the building and construction trades department met and unanimously passed a resolution in support of S. 757.

In light of the previous testimony which is a matter of record, and Mr. Haggerty's recent letter—and I might point out here Mr. Askew has been designated as the official spokesman for the building and construction trades unions—I do not feel it necessary to further impose on this committee's time to restate in detail our support of S. 757.

I sincerely thank you for the opportunity to appear this morning and urge that you give early and favorable consideration to this measure.

Senator PROXMIRE. All right, sir. Now, I take it, Mr. Askew, you are going to give the substantive reasons why you are supporting this legislation, which I take it Mr. McSorley also joins in. Is that correct?

Mr. ASKEW. Yes, Mr. Chairman.

Senator PROXMIRE. Go ahead.

Mr. ASKEW. 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.

For the purpose of my testimony upon S. 757 being considered by your committee, I have also been designated as a spokesman for all of the unions affiliated with the building and construction trades department of the AFL-CIO.

Senator PROXMIRE. By whom were you designated to do this?

Mr. ASKEW. By the building and construction trades department.

Senator PROXMIRE. What consideration did they give this legislation? There has been some question, and I want to clear this up and have you make as clear a record as you can here. Yesterday we had a resolution put in the record by Mr. Horne, I think, from an Oregon building trades group against the bill.

Mr. ASKEW. I yield to Mr. McSorley, Mr. Chairman, and then I would like to comment too.

Mr. MCSORLEY. If I might say, we would question the resolution that was entered yesterday. I understand it was submitted on note paper and in longhand.

We have a procedure for submitting anything like this. This would be on a formal letterhead from the State building and construction

trades council concerned. It would be typed, setting forth the resolution, the action taken, and where the action was taken, if it was convention or State council meeting, and it would be forwarded to the building and construction trades department.

Now, in 1961 the building and construction trades department held a convention and a resolution was introduced in support of legislation similar to S. 757. That was passed unanimously by all the delegates present and representing not only the 18 affiliated national and international unions but the State councils and the local councils.

Now, as a result of that action, any move contrary to that position would have to come to the department for submission to the executive council for consideration and resubmission to the next convention.

I might say the resolution has no weight as far as the leadership—

Senator PROXMIRE. I just want to know: Since 1961 has there been any action to your knowledge taken by any group in opposition to your position in favor of this legislation?

Mr. McSORLEY. As assistant to the president of the department I have never heard or seen anything contrary to the position established in 1961. And I say as late as yesterday the executive council of the department meeting in session reaffirmed their support of S. 757.

Senator PROXMIRE. Thank you.

Mr. ASKEW. Because your committee held hearings upon this legislation last year, Mr. Chairman, at which time considerable testimony was given, and a substantial record was established, and in the further interest of conserving time before your committee now, I shall address myself to those points which would bring the subject up to date. I am attaching to my testimony a copy of my statement before your committee last year.

(Mr. Askew's statement of last year is on pp. 27-51 of the hearing, "Construction Set-Aside Amendments, S. 1363 and S. 3096, June 1962.")

Mr. ASKEW. Last year we attempted to show that the criteria used by the Small Business Administration in determining small and large contractors was something left entirely to the authority of the Small Business Administration itself, that they could change it at will, and, more importantly, that it has become almost a natural line drawn between nonunion and union contractors, thus setting the contract aside for nonunion contractors and prohibiting the union contractors from bidding.

We have continued to receive complaints from our employers that the set-aside program is detrimental and unfair to them. As a sampling of the letters I have received, I am attaching three from:

Codell Construction Co., Winchester, Ky.; Kenny Construction Co., Skokie, Ill.; and Ralph Myers Contracting Corp., Salem, Ind.

(The letters submitted follow:)

CODELL CONSTRUCTION CO., INC.,
Winchester, Ky., April 23, 1963.

MR. BURL TRAVIS,
International Union of Operating Engineers,
Lexington, Ky.

DEAR MR. TRAVIS: In reference to our telephone conversation of this date I wish to call to your attention that a number of projects being advertised for bid by governmental agencies, mainly the Corps of Engineers, are being set aside for small business. A number of these projects are in the \$4 to \$5 million range, which in a number of instances is too large and too technical to be considered by the general run of small contractors.

As you know, the rate of failures in the construction business has substantially increased in the past few years and it is my belief that most of these failures have happened in the small contractor or small business class and is the direct result of being understaffed and underequipped to perform these larger projects that are set aside for small business.

Our own company performs numerous jobs each year for various highway departments in the Southeastern States in the \$50,000 to \$5 million class and in practically every instance the Federal Government participates in the financing, generally from 50 to 90 percent.

We can recall one job that was advertised for bids and set aside for small business in 1962 that amounted to several million dollars. We were denied the right to bid this project although we bid on highway work almost every week against all contractors that submitted a bid on this project. The job I refer to was in connection with the Fishtrap Reservoir, Pike County, Ky., advertised by the U.S. Corps of Engineers, Huntington, W. Va.

A more recent project that comes in the same category is to be let on April 30 by the U.S. Corps of Engineers, Louisville, Ky., for the construction of the Niblack Levee in Knox County, Ind.

Although I have named only two specific projects at this time if you desire a complete list of the projects that we have been denied the right to bid on, we shall be glad to compile the information and forward to your office.

Very truly yours,

J. C. CODELL, Jr., *President.*

KENNY CONSTRUCTION CO.,
Skokie, Ill., April 20, 1963.

Mr. BURL TRAVIS,
*Business Representative, Local 181,
International Union of Operating Engineers,
Lexington, Ky.*

DEAR MR. TRAVIS: In the matter of proposed construction work set aside for small business by various Government agencies it is my thought that some of the work being set aside is of such scope that firms qualifying as small business as defined in the proposals are not actually qualified to perform the work because of lack of experience, construction plant, and personnel.

In the past year our firm has taken plans on several projects advertised by the Corps of Engineers and due to the small business restriction has been unable to qualify as a bidder. Some of these projects were in the range of \$3 to \$4 million and of such scope that in my opinion proper performance was beyond the ability of some bidders.

It would seem to me that the larger projects that have been set aside for small business should have been open to all contractors for competitive bidding in order to assure the corps of reasonable bids and consequent satisfactory completion of the projects.

Very truly yours,

W. F. PRIDE.

RALPH MYERS CONTRACTING CORP.,
Dry Ridge, Ky., May 1, 1963.

TO WHOM IT MAY CONCERN:

Our company is engaged in the construction of highways and dams in several States.

On several occasions, we have been unable to bid on projects because of a stipulation that allows "small business concerns" only. We feel that we are qualified in every other way for these jobs and lose several opportunities due to this ruling, plus the idea that we could possibly save the taxpayers some money on some of this work because of our experience in this field.

Cordially,

FOSTER MYERS, *President.*

Mr. ASKEW. These three contractors are really small contractors by any fair standards in the construction industry. Yet they are prohibited from bidding by SBA standards.

Last year I referred specifically to several missile and test facilities where the set-aside program was discriminating against all members

of unions of the building trades. Among them were Huntsville, Ala., Cape Canaveral, Fla., and Denver, Colo.

This year I offer a new site for your committee to consider the activities of SBA. On the gulf coast of Mississippi, the National Space Administration has now started construction of the Mississippi test facility. At the request of NASA, all segments of the construction industry were requested to assemble in Gulfport, Miss., last week, on May 1 and 2, to develop a "stabilization agreement" for this multi-billion-dollar project which would include an ironclad no-strike provision.

I attended these meetings and served as a member of the negotiating committee of the building and construction trades department. Officials of NASA and the Corps of Engineers were present. Fifty-three labor representatives of all unions in the industry were present. Nearly all associations in the construction industry were represented with more than 55 contractors present.

Certainly, all of us from labor, and I believe nearly all of those from management, were shocked to learn that bids have been requested upon 11 construction contracts so far, 4 have been awarded running into millions of dollars, and every single one of them has been set aside for small business.

(Material on the Mississippi test facility follows:)

SMALL BUSINESS SET-ASIDE

U.S. ARMY ENGINEER DISTRICT, MOBILE

CORPS OF ENGINEERS

2301 Airport Boulevard, Mobile, Ala.

APRIL 19, 1963.

ADVANCE NOTICE TO PROSPECTIVE BIDDERS FOR EXCAVATION FOR LOCK AT MISSISSIPPI TEST FACILITY, MISSISSIPPI

Invitation serial No. ENG(NASA)-01-076-63-21 will be issued on or about May 3, 1963, for excavation for lock at Mississippi test facility, Mississippi.

The approximate value of the proposed construction is \$1 million. Mississippi test facility is located in Hancock County, Miss., and is served by the Southern Railway.

Competitive bids will be opened on or about June 6, 1963.

The work to be performed includes the following principal features and approximate quantities:

- (a) Clearing approximately 158 acres.
- (b) Grubbing approximately 54 acres.
- (c) Approximately 875,000 cubic yards of unclassified excavation.
- (d) Design, installation, and operation of dewatering system.

Bid guarantee, in a penal sum of 20 percent of the bid price or \$3 million, whichever is the lesser, will be required if the bid price is in excess of \$2,000.

The work will be awarded as a whole to one bidder and the successful bidder will be required to execute the Department of the Army contract form for construction, standard form 23, supported by certificate of insurance, and performance and payment bonds in penal sums to be indicated in the invitation for bids.

Bidders will be required to submit data showing previous experience and qualifications for performing the work.

The contract specifications will provide for commencement within 8 calendar days after receipt of notice to proceed and completion of all work within 165 calendar days after receipt of such notice to proceed.

Sets of drawings, reduced to half size, and of specifications will be furnished upon receipt of payment of \$1 per set. Requests for plans and specifications should be submitted to reach this office on or before May 1, 1963. No refund of the payment for drawings will be made and the drawings need not be returned to

the district engineer. Single sets of specifications alone will be issued without charge to applicants considered to be properly interested. Additional copies of the specifications alone will be furnished an applicant at the rate of \$1 per copy. Payments will be made by cash, check, or money order and delivered to the Finance and Accounting Officer, U.S. Army Engineer District, Mobile, 2301 Airport Boulevard, Mobile, Ala. Checks and money orders should be made payable to Treasurer of the United States.

Plans and specifications will be issued without charge to such organizations as Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, and others which maintain public plan display rooms.

Plans and specifications, when issued, will be on exhibit in room 24, Building 3 at this office, and at the following locations, where they may be inspected by prospective bidders and others concerned:

Division Engineer, U.S. Army Engineer Division, South Atlantic, 510 Title Building, 30 Pryor Street SE., Atlanta, Ga.

Real Estate Office, Corps of Engineers, Mississippi Test Facility, Bay St. Louis, Miss.

Associated General Contractors, Post Office Box 4523, Jackson, Miss.

Associated General Contractors, 201 South F Street, Pensacola, Fla.

Associated General Contractors, Suite 205, Hotel Peabody, Memphis, Tenn.

Associated General Contractors, Post Office Box 61, Gulfport, Miss.

Associated General Contractors, 1801 South Monroe Street, Tallahassee, Fla.

Atlanta Builders Exchange, 393 Techwood Drive NW., Atlanta, Ga.

Birmingham Builders' Exchange, Post Office Box 1269, Birmingham, Ala.

Panama City Plan Room, 521 East 6th Street, Panama City, Fla.

Construction Industry Association, 601 South Broad Street, Mobile, Ala.

Construction Industry Association, 816 Howard Avenue, New Orleans, La.

SMALL BUSINESS SET-ASIDE

U.S. ARMY ENGINEER DISTRICT, MOBILE

CORPS OF ENGINEERS

APRIL 22, 1963.

ADVANCE NOTICE TO PROSPECTIVE BIDDERS FOR CONSTRUCTION OF EMERGENCY SERVICE BUILDING AT MISSISSIPPI TEST FACILITY, MISSISSIPPI

Invitation serial No. ENG(NASA)-01-076-63-23 will be issued on or about May 2, 1963, for construction of emergency service building at Mississippi test facility, Mississippi.

The approximate value of the proposed construction is \$300,000.

Mississippi test facility is located in Hancock County, Miss., and is served by the Southern Railway.

Competitive bids will be opened on or about June 5, 1963.

The work to be performed includes the following principal features and approximate quantities:

(a) Construction of emergency service building. The building will be a one-story structure having a floor area of approximately 15,000 square feet. Exterior walls will consist of a combination of precast concrete panels backed with concrete unit masonry, and corrugated metal siding supported by structural steel framework. A built-up roof will be supported by an insulated steel roof deck in one area and by a lightweight concrete deck over the remaining area. Facilities included will be aluminum awning windows, overhead rolling doors, metal and wood doors, metal toilet partitions, and miscellaneous kitchen and lunchroom equipment. The building will also have a central air-conditioning and heating system, a plumbing system, an electrical system and bonding and grounding.

(b) Exterior electrical work including poles, floodlights, traffic signs, and underground conduit.

(c) Site development will include the following:

- (1) Clearing and grubbing.
- (2) Unclassified excavation.
- (3) Bituminous paving.
- (4) Concrete paving.
- (5) Storm drainage system.
- (6) Grassing.

Bid guarantee, in a penal sum of 20 percent of the bid price or \$3 million, whichever is the lesser, will be required if the bid price is in excess of \$2,000.

The work will be awarded as a whole to one bidder and the successful bidder will be required to execute the Department of the Army contract form for construction, standard form 23, supported by certificate of insurance, and performance and payment bonds in penal sums to be indicated in the invitation for bids.

Bidders will be required to submit data showing previous experience and qualifications for performing the work.

The contract specifications will provide for commencement within 8 calendar days after receipt of notice to proceed and completion of all work within 270 calendar days after receipt of such notice to proceed.

Sets of drawings, reduced to half size, and of specifications will be furnished upon receipt of payment of \$4 per set. Requests for plans and specifications should be submitted to reach this office on or before April 30, 1963. No refund of the payment for drawings will be made and the drawings need not be returned to the district engineer. Single sets of specifications alone will be issued without charge to applicants considered to be properly interested. Additional copies of the specifications alone will be furnished an applicant at the rate of \$1 per copy. Payments will be made by cash, check, or money order and delivered to the Finance and Accounting Officer, U.S. Army Engineer District, Mobile, 2301 Airport Boulevard, Mobile, Ala. Checks and money orders should be made payable to Treasurer of the United States.

Plans and specifications will be issued without charge to such organizations as Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, and others which maintain public plan display rooms.

Plans and specifications, when issued, will be on exhibit in room 24, Building 3 at this office, and at the following locations, where they may be inspected by prospective bidders and others concerned.

SMALL BUSINESS SET-ASIDE

U.S. ARMY ENGINEER DISTRICT, MOBILE
CORPS OF ENGINEERS

2301 Airport Boulevard, Mobile, Ala.

APRIL 23, 1963.

ADVANCE NOTICE TO PROSPECTIVE BIDDERS FOR CONSTRUCTION OF WAREHOUSE, SITE MAINTENANCE BUILDING, AND MISCELLANEOUS FACILITIES AT MISSISSIPPI TEST FACILITY, MISSISSIPPI

Invitation serial No. ENG(NASA)-01-076-63-24 will be issued on or about May 10, 1963, for construction of warehouse site maintenance building and miscellaneous facilities at Mississippi test facility, Mississippi.

The approximate value of the proposed construction is \$2 million.

Mississippi test facility is located in Hancock County, Miss., and is served by the Southern Railway.

Competitive bids will be opened on or about June 11, 1963.

The work to be performed includes the following principal features and approximate quantities:

(a) Construct a warehouse of approximately 52,000 square feet of floor space. The building will have structural steel frame, solid masonry unit firewalls, lightweight concrete fill over metal roof deck covered with built-up roofing, and exterior walls of concrete tilt-up panels and corrugated or ribbed sidewall panels. Building will have loading docks, sprinkler system, mechanical ventilation, and a high temperature hot water heating system supplied from a central plant. Equipment for packaging, crating, and preservation of stored items will be required. Provisions for RFI suppression grounding will also be provided.

(b) Construct a site maintenance building of approximately 8,400 square feet of floor space. The building will have a structural steel frame, lightweight concrete fill over metal roof deck covered with built-up roofing, and exterior walls of concrete tilt-up panels and corrugated or ribbed sidewall panels. Building will have a sprinkler system, mechanical ventilation, air-conditioning system and a high-temperature hot water heating system supplied from a central plant.

Interior walls will include movable partitions, vinyl covered gypsum wallboard on steel stud partitions, and wire mesh partitions. Equipment and all necessary utilities will be required for a complete machine shop, sheet metal shop, plumbing shop, refrigeration shop, electric shop, welding shop, site maintenance shop, carpentry shop, and for a food preparation and serving area in the lunchroom.

(c) Construct a well pumphouse of approximately 220 square feet. Building will have concrete masonry walls, steel bar joist roof framing covered with corrugated metal form, lightweight concrete fill roof deck, and built-up roofing. The building will be equipped with a 600 gallons per minute centrifugal pump, electric motor driven with a standby gasoline engine, a hypochlorinator, and connection to an existing well.

(d) Site development will include excavation, clearing, and grubbing, site grading, a fenced sewage lagoon, an altitude valve pit, a 300,000 gallon elevated water storage tank, and the following approximate quantities of work:

Water pipe, 8 to 14 inches in diameter	lineal feet	11, 900
Sanitary sewer pipe, 8 inches in diameter	do	3, 600
High-temperature hot water pipe (3-inch supply and return in underground conduit)	lineal feet	470
Bituminous paving	square yards	20, 000
Communication, concrete encased ductwork (2 to 24 conduits)	lineal feet	9, 000
Ground wire for ductwork, No. 4/0	do	9, 000
Ground rods for ductwork, $\frac{3}{4}$ inches	do	1, 500
Manholes for ductwork	each	17
Concrete pavement, 9 inches thick	square yards	2, 900
Storm drain culvert (15 to 54 inches in diameter)	lineal feet	1, 200

Bid guarantee, in a penal sum of 20 percent of the bid price or \$3 million, whichever is the lesser, will be required if the bid price is in excess of \$2,000.

The work will be awarded as a whole to one bidder and the successful bidder will be required to execute the Department of the Army contract form for construction, standard form 23, supported by certificate of insurance, and performance and payment bonds in penal sums to be indicated in the invitation for bids.

ADVANCE NOTICE TO BIDDERS

GENERAL INFORMATION

Date: April 24, 1963

Invitation No. CIVENG-22-052-63-98.

Sealed bids will be received until 11 a.m., c.s.t., May 28, 1963, and then publicly opened for the construction of Snake Creek to Marksville new levee, item 143-L, in Humphreys and Holmes Counties, Miss.

Plans and specifications are available for inspection at this office and at the following additional offices: Greenwood Area Office, CE, Greenwood, Miss.; U.S. Army Engineer District Memphis, West Memphis, Ark., and U.S. Army Engineer District, New Orleans, Foot of Prytania Street, New Orleans, La.

DESCRIPTION OF WORK TO BE PERFORMED OR SUPPLIES TO BE FURNISHED

The work consists of constructing approximately 992,000 cubic yards of embankment, 46,700 cubic yards of gravel surfacing, 10 drainage structures, 3 drain-line alterations, and dressing and sodding on the east bank of Yazoo River in Humphreys and Holmes Counties, Miss.

The approximate value of the work to the nearest multiple of \$100,000 is \$700,000.

This is a small business set-aside.

LOCATION OF PROJECT

The site of the work may be reached from Yazoo City, Cruger, Mileston, and Belzoni, Miss., over local gravel roads and local trails.

BOND REQUIREMENTS

Bid bond payment and performance bonds will be required.

OTHER CONTRACT PROVISIONS OR REQUIREMENTS

Minimum wage rates are prescribed in the specifications for all classes of labor which will be required on the work.

Liquidated damages will be prescribed.

Work must be commenced within 20 calendar days after the date of receipt of notice to proceed and shall be completed within 310 calendar days after receipt of notice to proceed.

INFORMATION ON OBTAINING DRAWINGS, SPECIFICATIONS AND BIDDING PAPERS

Set of drawings (half-size) and of specifications will be furnished upon receipt of payment of \$4.10 per set. If individual drawing sheets are requested, they will be furnished at rates of \$0.10 for half-size and \$0.50 for full size for each sheet, but with a minimum charge of \$1 and a maximum charge of \$10. No refund of payment for drawings will be made and the drawings need not be returned. One copy of specifications only will be furnished without charge, additional copies will be furnished for \$1 per copy. Payment will be in the form of cash, money order, or check made payable to "Treasurer of the United States" delivered to the U.S. Army Engineer District, Vicksburg, Miss.

The card below may be used to obtain further data. If no bid is to be submitted please advise whether future invitations for bids are desired. This information may be furnished by completing and returning the request card. Plans and specifications should be requested by May 16, 1963.

WARREN S. EVERETT, *Colonel, CE, District Engineer.*

ADVANCE NOTICE TO BIDDERS—REQUEST CARD

U.S. ARMY ENGINEER DISTRICT, CE,

P.O. Box 60, Vicksburg, Miss.

Invitation No. CIVENG-22-052-63-98.

Sets of plans.

Sets of specifications (\$4.10 per set of 41 drawings).

(Check one of the following:)

We expect to submit a bid on this work as a prime contractor.

We do not expect to submit a bid on this work.

We expect to act as a subcontractor or material supplier on this contract.

Please remove our name from your mailing list for advance notice to bidders.

Name of company-----

Address-----

City, zone, and State-----

Mr. ASKEW. Here again, our Government is asking for an iron-clad "no-strike" agreement for an installation that has been set aside by SBA for small nonunion contractors, making this Government installation a haven of refuge for them where they will be immune from organizing efforts of trade unions and where living standards will suffer.

Senator DOUGLAS. Mr. Chairman, might I ask the witness a question?

Senator PROXMIRE. Yes, indeed.

Senator DOUGLAS. Mr. Askew, do you have proof that the four companies which have received these contracts are, in fact, nonunion contractors?

Mr. ASKEW. Senator, I would say my statement is not to be interpreted that in every instance there is absolutely no union membership that will be employed by these contractors.

I did, however, as late as yesterday, check these contracts and I believe that one of the small contracts was a union contract. Three were nonunion.

Senator DOUGLAS. Now, you say that these four are nonunion contractors. Would you give the names of these contractors?

Mr. ASKEW. I will be very happy to furnish them to you.

Senator DOUGLAS. Why not do it for the record now so that we may get these facts out?

Mr. ASKEW. I do not have the names at my fingertips, Senator, but I would be happy to do that before the day is over.

Senator DOUGLAS. Very good.

And would you supply a statement as to whether or not they are union or nonunion contractors?

Mr. ASKEW. Yes, I will.

Senator DOUGLAS. Or if they employ union labor in certain crafts but not in others would you state that?

Mr. ASKEW. I will be very happy to give you a complete picture on the union versus nonunion question.

Senator DOUGLAS. But you feel certain that on the whole these are far more nonunion than union?

Mr. ASKEW. As I stated last year, Senator, I do not mean to imply that the Small Business Administration or any of the people associated with it are themselves antiunion. I have never—

Senator DOUGLAS. No, no.

Mr. ASKEW. But I do want to say—

Senator DOUGLAS. I am speaking of the contractors, not of the Small Business Administration.

Do you say that these contractors are nonunion or antiunion? You use the term "small union contractors."

Mr. ASKEW. Yes.

Senator DOUGLAS. This refers to the four that have been awarded these contracts. This is a very important point.

Mr. ASKEW. Yes.

Senator DOUGLAS. And we want to establish facts.

Mr. ASKEW. But could I turn the coin over, Senator, and say to you that we in the trade unions find it awfully difficult to understand why our Government would exclude such a large number of our union employers who employ our people and keep them outside of the gate and will not let them bid.

Senator DOUGLAS. Has Fuller been excluded? George A. Fuller?

Mr. ASKEW. I would certainly say George A. Fuller could not qualify as a small contractor.

Senator DOUGLAS. Could you give the names of some of the big contractors who have been excluded?

Mr. ASKEW. I think certainly I could give you names of contractors in Gulfport, Miss., or contractors—well, let me say this to you: We had 55 of them down there last week as I said here in my statement, and they were tremendously shocked.

I lunched with them, worked with them all day, sat in committee meetings, and they were complaining bitterly to me that they had been excluded.

It appeared to them, they said to me, that—

We won't get any work on the Mississippi test site facility—

because the first 11 contracts in construction called for, all 11, have been set aside for small business.

Senator DOUGLAS. All 11?

Mr. ASKEW. All 11 have been set aside for small business. Yes, sir.

Senator DOUGLAS. Up above you say four have been set aside.

Mr. ASKEW. I say four have been awarded. That is what my statement says.

Senator DOUGLAS. Yes.

Mr. ASKEW. And the rest of the contracts have not yet had bids opened on them, but it is already decided and they have been set aside.

Senator DOUGLAS. Has it been stated that the other seven have been set aside?

Mr. ASKEW. The documents are out calling for bids and notifying the contractors in calling for bids that, "You need not bid if you do not qualify as a small business concern, because this contract has been set aside for small business."

Senator DOUGLAS. I see.

Mr. ASKEW. That is true in each of all 11 cases. Yes, sir.

(Additional information may be found on p. 106.)

Senator DOUGLAS. Would you give the names of some of the large firms that would be excluded in addition to the Fuller firm?

Mr. ASKEW. Yes, I will be happy to. I do not have them at my fingertips.

Senator DOUGLAS. You know this industry rather thoroughly. Your international union has contracts with the big firms. Could you not mention—

Mr. ASKEW. I will be happy to mention some right now, Senator.

Senator DOUGLAS. Good.

Mr. ASKEW. But being anxious to give you all of the detailed information, or in as great detail as I could, I was trying to say later this afternoon.

Senator DOUGLAS. Why not at least give the names of a dozen now?

Mr. ASKEW. All right. Well, we will take a dozen.

Stone & Webster Corp.

Fuller Corp.

Kaiser Engineering Corp.

Senator DOUGLAS. Go a little bit more slowly, please.

Mr. ASKEW. Paul A. Hardman Co.

The M. M. Sundt Co.

Morrison Knudson.

Peter Kewitt.

I could certainly give you a much longer list.

Senator DOUGLAS. All of those large firms are union firms?

Mr. ASKEW. Yes.

Senator DOUGLAS. All of the large firms are union firms?

Mr. ASKEW. Yes. And they are prohibited from bidding.

I have a few here in front of me that I would like to read if you want a longer list.

We could say Walsh Construction Co.

Virginia Engineering Co.—and, incidentally, the name of that company has been changed to Basic Construction Co.

Utah Construction.

United Engineers.

Turner Construction Co.

Oman Construction Co.

Rust Engineering.

Merritt-Chapman & Scott.

Dravo Corp., Contracting Division.

Bates & Rogers Construction Corp.

Guy F. Atkinson.

Bechtel Corp.

We could go on this all day, and I could send you a book of them. It would be much easier.

Senator DOUGLAS. Is the Chapman-Hall firm in that list?

Mr. ASKEW. Merritt-Chapman & Scott Corp.? Yes, I named them. They would not be able to bid on any contract set-aside for small business.

But that was my point, Senator. When 11 contracts are set aside or when any contract is set aside that in general really means that those contractors who employ our people, a tremendously large portion of them, are disqualified.

I do not mean to imply we do not have some small contractors organized. We do have. But I am just simply saying as a general rule of thumb when you say big contractors you are talking about employers that for years have had experience in labor-management relations, have learned how to get along together, have developed the common interest to do a good job, to give the customer a good product, at a profit to the employer and a decent standard of living to the employee.

When we talk about little contractors, we are talking in many, many instances of people who are new in the business, and a lot of them feel the need to cut corners, and do, and do not come up to the living standards that our employers do.

And that was my point in saying that two strikes are against us when you set the contract aside. And that is what I wanted to say. It forms a natural line of demarcation. It puts our people out of employment most times.

Again, that is the reason I was saying I do not mean to say that our Small Business Administration intentionally is that way, but it is the criteria that does it, the rule of thumb they work with.

Senator DOUGLAS. To what degree are your people protected by the Walsh-Healy Act?

Mr. ASKEW. In this situation we are not protected by that. I do not see the relevance, the tie-in to this.

Senator DOUGLAS. Prevailing wage and working conditions would have to be observed, would they not?

Mr. ASKEW. Well, I realize that the wage rates are predetermined by Davis-Bacon.

Senator DOUGLAS. Excuse me. Davis-Bacon.

Mr. ASKEW. But I want to point out to you, Senator, that these contractors for whom contracts are set aside and in most cases who are nonunion, if they do not have a union contract, have many things they do not have to do which are cost items that are in a union contract with the union employer.

And then even aside from the union contract and the cost items there, let me again point out to you that the Labor Department has never been able to catch up on complaint and violation cases where employees were misassigned. A helper was doing the mechanic's work. And that is quite a difference in price.

If our contractor is going to be fair and honest about it and he is bidding against a fellow, even if he is permitted to bid—and we are talking about here cases where he cannot even bid—then he has got quite a cost item. That is a strike against him before he can even get started.

Senator DOUGLAS. Thank you, Mr. Chairman.

Senator SPARKMAN. Mr. Chairman, may I take advantage of this break? I am going to have to leave in a very few minutes.

Senator PROXMIRE. All right.

Senator SPARKMAN. By the way, you mentioned that SBA sets them aside. Now, you do not really mean that, do you?

Mr. ASKEW. I do not really mean that, Senator. I know that story backward and forward, and you and I went through that last year.

Senator SPARKMAN. Of course you know.

Mr. ASKEW. I think I said last year it does not make any difference, that it is a choice between getting shot or hung.

Senator SPARKMAN. You use the expression that it has been "set aside by SBA," and, of course, SBA does not have any power to set aside.

Mr. ASKEW. No; I think the truth of the matter is they develop—

Senator SPARKMAN. I am somewhat puzzled about the Mississippi site, because it has been my information that a tremendous contract down there has been given to General Electric to manage much of the contracting. Do you know anything about that?

Mr. ASKEW. I have no knowledge, Senator, that any contract has yet been awarded to General Electric.

Senator SPARKMAN. Perhaps it does not include construction of these particular facilities. But I think there was an announcement recently that general overall handling of that program was to be under General Electric.

Mr. ASKEW. I do not know. There may be some management contract or operations or some discussions going on between NASA and General Electric for some portion of the work. But I do feel confident in saying that no public announcement has been made where a contract has been awarded for construction work other than the ones that I have already made reference to.

Senator SPARKMAN. Yes; well, I am prompted by Mr. Amis that probably construction is not included. We have had some testimony before the Small Business Committee pertaining to it generally.

It may be construction is not included and that negotiations are in process now for working out the final contract.

Now, you made one statement there, and a thought flashed in my mind. You said these big companies have experienced labor-management relations, and undoubtedly many of them do and know how to get along with labor. You know, of course, that one of the most irritating problems before Congress and before the country now is these strikes at missile bases that we have been having and at similar sites.

Now, does that bear out your statement that these big companies know how to get along and not have trouble? Because you recognize I am sure it is a perplexing problem and one that people of the country are concerned with.

Mr. ASKEW. I am awfully happy that you mentioned the strike figure or loss of man-hours, man-days on, let's say, defense construction

in general. As you may well know, our Government is now keeping very accurate and detailed figures on this, and these figures are submitted to us each month in the construction industry joint conference to which Dr. Dunlop referred.

That figure now has gotten down to such a small one we cannot find a pen that would make a small enough dot of ink to record it on the paper, Senator. We feel very proud of that record, despite what any publication or people may write about it, Senator.

Senator SPARKMAN. Let me say that I agree with you that it is something to be proud of when you get it down to that diminishing level.

And yet you realize that any one, occurring anywhere, particularly when they say it is probably going to hold up this program or that program, is something that in both our defense and our space work is particularly irritating to the American people. Undoubtedly it looms larger than it actually is.

Mr. ASKEW. That is the reason for our being down in Gulfport now. I think that the Cape Canaveral agreement certainly was a new step of its kind in labor-management relations in the country. I think it has done the country a wonderful lot of good, and all of us, I believe, in the industry. I am talking about the responsible contractors with whom we deal and all in labor.

That is what we were doing in Mississippi—to assure our Government we are going to get that man on the moon before Khrushchev does and that labor problems are not going to be something that will retard that program. So I certainly agree with you. That is what we are down there for. And we think we will get the job done.

Senator SPARKMAN. Now, you said something about the Oregon resolution that was presented yesterday in pencil form. I do not think it was intended to be the original. I do not know. I do not know about that.

But you know also attention was called yesterday to the fact that there had been a resolution, I believe passed by the National Association of Plumbing, Heating & Cooling Contractors, endorsing the set-aside. Are you familiar with that?

Mr. ASKEW. Well, on the first I would like to comment, Senator, on the so-called resolution that comes out of Oregon. (See p. 19.) I certainly think that we probably owe an apology to Senator Neuberger to have that thing drop in here like it did, because it flabbergasted us too.

And yesterday I spent most of the afternoon on the telephone talking with people in Oregon who have no knowledge of it. And I understand that they are communicating their feelings about that thing to Senator Proxmire as chairman and to Senator Neuberger.

We feel like in the next few days much new light will be thrown on that one. I intend to make it a matter of my business to try to get to the bottom of it and at least to try to get the true sentiment of the building trades movement in Oregon.

With reference to the Plumbing, Heating & Cooling Contractors, I would rather leave it to them to state their position, and I would prefer not to comment on it.

Senator SPARKMAN. I notice in the Congressional Record of May 2, page A2710, an insertion by Hon. George E. Shipley of Illinois,

Congressman from Illinois. He inserts a column written by Mr. C. D. Brownell of Champaign, Ill., president of the National Association of Plumbing, Heating & Cooling Contractors, in which he discusses this set-aside and tells how important it is that it be retained in the law.

Mr. ASKEW. Well, my only comment on that, Senator, is that it is pretty hard to get unanimous agreement on anything in an industry that comprises as many national associations.

I think if we view it from the point that there are a great many national associations, specialty associations, such as painting, decorating, masonry association, sheetmetal association, electrical contractors' association, the Associated General Contractors of America, National Constructors' Association, and so on down, then we might have somewhere in this construction industry some little thing crop up on that side of the fence like we did in Oregon, like we did in the resolution that came from there.

But I think if we can view the thing in general and as a whole we still find ourselves in the position here today of having a tremendous, gigantic majority of this industry, both management and labor, saying that we do not need this help. We do not want the doctor running around punching needles in us and giving us pills if we are not sick. And we are not sick. And we have not asked for it.

And the industry is saying to your committee now, with very, very few exceptions—and there may be some isolated cases—we do not need this. If you are going to regard their feeling about the matter and the people that SBA is supposed to be helping, if you are going to listen to them, I think you have to find that the great majority are saying we do not need this, that it is not good for the industry, the country, or the taxpayers either.

Senator SPARKMAN. Then you would concede that perhaps there are some union organizations who do not—

Mr. ASKEW. I do not concede that yet, Senator. I do not concede it.

Senator SPARKMAN. Well, will you read that Congressional Record article that I referred to? I think that was presented here for the record.

(The article appears on p. 169.)

Mr. ASKEW. I think you said union organizations.

Senator SPARKMAN. What?

Mr. ASKEW. Maybe I misunderstood your question. Was your question whether I concede there are some unions who—

Senator SPARKMAN. Well, certainly some interested contractors, specialty contractors. Yes, I said "labor organizations." I mean "specialty contractors." I used the wrong word.

Mr. ASKEW. Well, I would be reluctant to testify that some contracting—

Senator SPARKMAN. You just said there are so many different ones that you cannot account for all of them.

Mr. ASKEW. Yes.

Senator SPARKMAN. You would not be willing to say that they are all supporting this, would you?

Mr. ASKEW. I would not say that. As an example, you say the heating and cooling contractors may come in here and testify that

they are against this bill. I am not going to say that they would not do that. But I say if they do then they are certainly in one of the smallest minorities I think I ever looked at.

Senator SPARKMAN. Now, with reference to the statements that have been made about the dividing line between small and big business so far as unionization is concerned, there has not been any clear testimony on that. I think you have heard us comment on that at times.

For instance, yesterday there was some comment of a general nature that indicated probably it was about half and half in both divisions, big and small.

Mr. ASKEW. I think that testimony, Senator, came from my testimony last year when I was asked to have some statistics on the matter. And I went to the Corps of Engineers and to NASA and attempted to get these figures. I was told by the Government agencies that these figures existed for only one facility in the entire United States, and that being Cape Canaveral.

So, as the figures existed at that particular time, I developed those figures. And I think that the way it came out was as the situation existed then there was about half of the work union, half of it nonunion—on the contracts awarded.

In observing the statement of the Administrator yesterday, it appeared that there was an effort to sort of state that this was pretty much a general thing and it might even be a national picture. I certainly would never subscribe to that conclusion.

Perhaps our memories do not always serve us best, but for the testimony of last year to get twisted into this light for this committee to rely on would be a great, great mistake. I do not believe that to be the case.

Senator SPARKMAN. I do not think we would rely on it. In fact, the statement has been made all along that it was only a general suggestion.

Mr. ASKEW. My statement, I think, last year was something to the effect of "at least."

Senator SPARKMAN. That is right.

Mr. ASKEW. I did not say that there was not more. Because I know in many instances—I know for a fact at Patrick Air Force Base—during this period of time when we went down there last year, which was just prior to my giving testimony, a few days prior, we found at Patrick Air Force Base the figure was a great deal larger in favor of the nonunion contractors than it was the union contractors. We met with all of the business agents of every union having membership in Cape Canaveral, and we received testimony down there for more than 2 days meeting with management, labor, NASA, Corps of Engineers officials, and all.

None of them disputed the fact at that time at Patrick Air Force Base—not the cape but at Patrick Air Force Base—that the nonunion contractors had control of better than 80 percent of the work.

I would like to make one further comment about the testimony if I may, since we got into that—the testimony of the Administrator yesterday.

Senator SPARKMAN. May I, just before you start, say that I am going to have to leave. Sorry I cannot stay and listen to the rest of

your testimony. But I appreciate your statement, and the manner in which you have handled it—both of you gentlemen.

Mr. ASKEW. Thank you.

Senator SPARKMAN. Mr. Chairman, if I may be excused, I have got to leave town.

Senator PROXMIRE. Yes indeed. Proceed, Mr. Askew.

Mr. ASKEW. Mr. Chairman, yesterday I believe the statement was made by the Administrator, "Obviously, he"—and it is referring to me—"desires, if I am interpreting his remark correctly, to compel all Government construction contracts to be awarded to union firms."

I believe if a close study of my testimony last year, to which the Administrator was making reference, is made, the Administrator would have also found that I said these words:

We are not asking your committee, in this legislation, to pass a law requiring—

Senator PROXMIRE. From what page are you reading?

Mr. ASKEW. On page 61. Incidentally, this is before the House Banking and Currency Committee, Senator. But I felt that the Administrator certainly must have studied both records. But in that I testified and said:

We are not asking your committee, in this legislation, to pass a law requiring a nonunion contractor to give paid vacations or to make some provision for the sick, the crippled, the ill, or to pay time and a half for certain overtime provisions. That is not what we are asking your committee to do. But we are asking your committee not to let it continue to be a law prohibiting our employers who do provide these benefits from bidding on the work.

That is the end of the quote.

If I may now say, Mr. Chairman, we are not asking our Government to give these contracts to union contractors. We know our Government cannot take that position. We are just simply saying that we want our Government to refrain from saying that we cannot bid against them.

This is the great injustice in this whole thing, and I hope your committee will look at it. Because if it continues down the road as it is now going, I do not know but the statement of the Administrator yesterday causes one to wonder if it is getting to be the policy of our Government that by virtue of that question alone, union or nonunion, our Government is going to assure the nonunion contractor an equal share or more or any particular share of the work.

We are simply asking your committee to give us a chance to bid against those nonunion contractors even though they do not provide the standard of living that our employers do. We want that opportunity to bid against them.

If I may just say, this kind of complexion which we have gotten so clearly—and it continues to increase in its brilliance in the last several years—gives the building trades movement great concern and very much concern, because these policies are definitely antiunion. They are anti-standard-of-living for the people in the building trade movement.

If it has to continue to go this way, then I guess maybe we ought to know it now.

Senator PROXMIRE. As a matter of fact, you were the only witness last year as I recall who provided us with any kind of estimate. The Administrator relied on your testimony. I do not want to be unfair

to him, but I think since you are making this case so strongly, and it is an important part of your case, it would be very helpful to us if you could get something beside just an occasional example, some hard statistics showing that these small firms that do get the set-asides are inclined to be less uncapitalized than the bigger firms.

You have not had any kind of census data, any kind of other data to establish this fact, and I am just wondering if there is any place we can get it or if we have to rely on estimate.

Nothing you have said has been contradicted, and I am inclined to accept much of it on the basis of commonsense and on the basis of what Dr. Dunlop said. But if you could pin it down and give us chapter and verse so we would have some solid information to proceed on, it would be helpful.

Mr. ASKEW. Senator, your point is very, very well taken. I think, however, it bears on another statement that you made this morning or a question that you asked about where the burden of proof lies.

Now, I tried at your request last year, and I tried hard, and I had a staff of people dedicated to this project of trying to develop information, because I think your committee is entitled to every scrap of information that can be depended upon that we can bring to you.

But these Government agencies in cooperation with the Small Business Administration are a family just as thick as my office is. People over there do not do things that displease me, and I do not do things that displease them.

But let me tell you in my conversations with people in the Corps of Engineers as late as yesterday over the telephone at Mobile, Ala., the district office, which has control over this Mississippi test site area, I got to talking with them about these matters, and they said, "Well, confidentially, we will tell you it is the 'wrongest' thing in the world, the SBA set-aside, but we are not going to give you figures and cut our heads off and have some department head coming down here putting somebody in my job."

And that is the think I ran into last year. I am running into it again now.

I wish Senator Sparkman were here, because I know he feels strongly about this thing and he wants to help small business. But I would like to remind him that the burden of proof for a very good reason should be on the Small Business Administration and the defense agencies. They have got these figures at Cape Canaveral, and they could give us these figures on every Government installation in this country if they wanted your committee to have them. But they are—

Senator PROXMIRE. Mr. Bannerman comes up tomorrow and we shall certainly ask him for this. I will have the staff get in touch with him after we adjourn today and see if this afternoon he can gather as much for us as he can. He represents the Department of Defense. We hope he will be able to give some information. We will give him notice.

Mr. ASKEW. I say the burden of proof should be on SBA because when this amendment was passed in 1958 this industry and the people in your hearing room now never had any opportunity to come forward and be heard. This was a law enacted upon the people in this indus-

try without hearing from one single person in the industry, labor or management.

So I feel for that reason certainly it is not unreasonable to ask the Small Business Administration to come up with these figures, to come up with figures on subcontracting.

It is not unreasonable to ask the Defense Department: "You have these figures. You certainly have the facilities to develop them." Without any difficulty, without any redtape, each purchasing officer certainly has this information at his fingertips. He could furnish it, whether or not it was union or nonunion.

As I say to you, I tried. And we certainly do not have the staff that we can chase every Government contract from \$2,000 up across this country and come to your committee with any figures that would be reliable. And I would not want to give you any that were not reliable.

Senator PROXMIRE. Fine. Go ahead.

Mr. ASKEW. On Tuesday of last week I went to Birmingham, Ala., and met jointly with officers of all our local unions in the State and their employers. We reviewed this subject matter, and the contractors advised me that the set-aside program of SBA will not permit them to keep their employees fully employed and there is a danger that some of their companies may fail.

They complain that this program is unfair to them, the industry, the public, and their employees. They complain that by striving for increased production and having enjoyed a little success the set-aside program is a penalty levied against them for this increased production and success, prohibiting them from further bidding on Government contracts.

And yet, Mr. Chairman, not one of these contractors could by any fair standards be considered "giants" in the industry. They are nothing more than average contractors in the construction business.

On Friday, September 7, 1962, the Department of Defense included in their statement to the House Banking and Currency Committee the following:

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 usually within the capabilities of small construction firms.

Now, Mr. Chairman, except for missile site construction during 1962, small firms were awarded upward of 75 percent of all military construction contracts. This did not include subcontracts given to small firms by general contractors having a prime contract.

If anything is made clear by these hearings, we sincerely hope that it will be that the Small Business Administration has never come forth with figures showing the volume of business given to small business in subcontracts by the general contractor. We sincerely believe that if these figures are ever made available, they will expose in clear light the folly and injustices of the set-aside program in the construction industry.

To judge this subject fairly, it is imperative that a general contractor's operations be understood and the percentage of the prime contract that small firms are given in subcontracts. A general contractor, to a large degree, is a coordinator of small business. Before

placing a bid on the prime contract, he will solicit bids from many small specialty contractors who only perform a specialized and certain portion of the work. Some such firms are as follows:

Drilling companies, foundation companies, masonry companies, plumbing and pipe fitting companies, electrical companies, insulation companies, air-conditioning companies, sheet metal companies, boiler companies, waterproofing companies, roofing companies, steel erection companies, marble and stone setting companies, painting and decorating companies, landscaping companies, and so forth. All small business.

These subcontract bids usually make up a great majority of cost in any prime contract. Yet the Small Business Administration refuses to use these figures in computing the amount of Government construction done by small business.

Senator PROXMIRE. I want to ask you to give us the basis for the figures you give on page 4 where you say small firms were awarded upward of 75 percent of all military construction contracts except missile site construction.

Mr. ASKEW. Yes, sir. I had our research department do that. I could supply that later this afternoon.

Senator PROXMIRE. Could you supply for the record the basis for that, how they calculated it, what their source was, and so forth?

Mr. ASKEW. Yes. I will furnish that before the day is over.

(The information requested appears on p. 106.)

Senator PROXMIRE. Then, on the last statement, that subcontracts make up a great majority of cost in any prime contract, once again we have a generalization that may well be true. I suspect it is. But any factual, statistical data you can give us would be very helpful.

Even if you can give it on the basis of examples or anything like that. I do not want to detain you. It is late, and we have other witnesses. But if you can give it to us before we close the record in a week or so, it would be very helpful.

Mr. ASKEW. All right.

(The information requested appears on p. 106.)

Mr. ASKEW. The construction industry has been treated as a unique industry in much legislation. Congress should recognize the uniqueness of our industry in small business legislation. Over 90 percent of construction firms are still small, independent businesses and they still do the vast bulk of all construction work. In 1961, construction in the United States amounted to \$77 billion. No single firm did more than 0.5 percent of this total.

In the automobile industry, on the other hand, 49 percent of the total business of this industry was accomplished by just one firm. In the steel industry 25.7 percent of the total business was accomplished by just one firm. In the aluminum industry, 36.1 percent of the total business was accomplished by only one firm.

Obviously, then, the very largest construction firms in the United States, in relation to their industry, are extremely small when we consider the relative size of the dominant firms in other industries.

This unnecessary and unwanted program costs needless expenditure of public funds. In just 33 documented cases, had there not been a set-aside, the Federal Government would have saved \$593,084.02.

Senator PROXMIRE. Once again will you give us the amounts involved and the basis for this calculation?

Mr. ASKEW. The basis of this calculation I believe, Senator, is in the record of last year.

(The information requested is included in Mr. Dunn's statement, pp. 127-128.)

Senator PROXMIRE. All right.

Mr. ASKEW. But I will check that for you.

Senator PROXMIRE. Fine.

Mr. ASKEW. It would be interesting to discover from the Small Business Administration or the Department of Defense witnesses precisely how many man-hours are involved in carrying out this expensive and unwanted program.

Apparently, the costs are of more concern to us that they are to the SBA, whose answer to the charge that set-asides have cost an added several hundred thousand dollars to the cost of the Government doing business in the construction industry is as follows:

The very purpose of the [Small Business] Act and the provisions of the armed services procurement regulations negate any thought that the procurement must be obtained at the lowest possible price.

Senator DOUGLAS. Mr. Chairman—

Senator PROXMIRE. The Senator from Illinois.

Senator DOUGLAS. Where did the Small Business Administration make this statement?

Mr. ASKEW. I believe that is in the record of last year.

Senator DOUGLAS. Well, it would help very much if you would put it in the record of this year, so that we do not always have to depend on some other source.

Who said that?

Mr. ASKEW. I believe that it was Mr. Maness, but I will check it. I would rather check it. I will furnish it to you, Senator.

Senator PROXMIRE. Provide that for the committee as well as for Senator Douglas.

Mr. ASKEW. Certainly I will.

(The information requested begins on p. 107.)

I should like to include, by attaching to my statement a copy of a letter addressed to you dated May 1, 1963, from Mr. C. J. Haggerty, president of the building and construction trades department which, again, speaks in a single voice for all unions in the United States, working in this industry, to support this legislation.

(Mr. Haggerty's letter is as follows:)

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO.

May 1, 1963.

HON. WILLIAM E. PROXMIRE,

Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing on behalf of the building and construction trades department in support of S. 757, a bill to exclude the "set-aside" program of the Small Business Act which is presently being considered by your committee.

The building and construction trades department is composed of 18 affiliated national and international unions, representing approximately 3½ million building and construction tradesmen throughout the United States. Thousands of building tradesmen have been deprived of job opportunities under this act.

While we wholeheartedly endorse the principles set forth in the Small Business Act, which holds that a fair proportion of the Government contracts should be let out to small businessmen in order to preserve free competitive enterprise, we believe that it is becoming a serious threat to the members of the building and construction trade unions. We feel the adoption of S. 757, excluding Fed-

eral construction, maintenance, and repair from the set-aside program under the Small Business Act would not only preserve, but foster free competitive enterprise.

With all due regard to the welfare of small business, we do not believe the Government should be required by law to show favoritism to small unorganized employers to the point of excluding larger unionized firms from bidding against them on defense contracts. The ones who are seriously hurt are the members of our building trades unions, who become unemployed.

We believe the current set-aside program in the construction industry is based on the lack of understanding of the unique facts and circumstances prevailing in this industry. All involved recognize that this is a program which the industry did not ask for, does not need, does not want, and which has done serious harm. For these reasons, I respectfully urge the early and favorable consideration of S. 757.

Sincerely yours,

C. J. HAGGERTY, *President.*

I should also like to advise that the executive council of the building trades now in session in St. Louis, Mo., yesterday again adopted a resolution reiterating their plea for passage of this legislation. I will later furnish a copy of this resolution.

(The resolution and accompanying letter follow:)

BUILDING AND CONSTRUCTION TRADES DEPARTMENT,
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., May 15, 1963.

GENERAL PRESIDENTS,
National and International Unions Affiliated with the Building and Construction Trades Department

DEAR SIR AND BROTHER: Enclosed you will find a resolution adopted by the executive council of the building and construction trades department at its meeting held in St. Louis, Mo., May 7-9, 1963, supplementing the action of a previous executive council meeting in Miami, Fla., November 1961, supporting legislation now before the Congress contained in H.R. 2029 and S. 757 providing for the exemption of the construction industry for the set-aside program of the Small Business Administration.

The executive council would deeply appreciate your cooperation by writing to your Congressmen and Senators asking them to support this legislation in order that the construction industry may obtain this much needed relief.

With best wishes, I am,

Faternally yours,

C. J. HAGGERTY, *President.*

RESOLUTION

Whereas the executive council of the building and construction trades department in its meetings in Miami, Fla., November 1961, did adopt a resolution supporting legislation which would remove the construction industry from the set-aside program of the Small Business Administration; and

Whereas H.R. 3690 and S. 1363 were introduced in the Congress and considerable progress was made upon the legislation during the year 1962, but without passage; and

Whereas the set-aside program of the Small Business Administration continues with intensity—doing injury to the competitive bidding system in the construction industry and to the industry in many other ways; and

Whereas new bills have been introduced in the 88th session of Congress, identified as H.R. 2029 and S. 757: Therefore be it

Resolved, That the executive council of the building and construction trades department do adopt this resolution reaffirming its support of H.R. 2029 and S. 757 and will request all affiliated councils and State organizations to write, wire, and meet with their Congressmen and Senators requesting their support of this legislation; and be it further

Resolved, That the Department will request each international union to communicate with each of their affiliated local unions to take the same action as provided herein.

Adopted by the executive council of the building and construction trades department this 7th day of May 1963.

In preparing to close, we again submit that the Small Business Administration finds itself pretty much alone in its defense of the set-aside program, that all of labor in the industry and, we believe, nearly 100 percent of all contractor or employer associations in the industry are speaking in a single voice and are still pleading for passage of this legislation.

Last year, after hearings were completed before the House Banking and Currency Committee, it was most amusing to read the record of a long list of letters, which we suspect were solicited by SBA, from supposedly small firms who were concerned and opposed to this legislation. Nearly of these letters read exactly alike. I believe that it is worthy of observation by your committee to tell you that the vast majority of them were from the following types of businesses: Furniture stores, baking companies, package cartons services, radiator manufacturing, realty companies, welding and manufacturing, sales and service companies, auto parts, auto sales companies, city ice companies, stationery companies, paint companies (retail sales), machine companies (sales), packing companies, Western Auto Stores (many of them), domestic gas service, oil companies (home heating supply), seed and garden supplies, warehousing and distribution companies, accountants, lumber mills, fence companies, guns and shooting supplies, jewelers, dairies, floor coverings sales (retail), shoe shops, drugstores, tool companies, hardware stores, liquor stores, clothing stores, banks, telephone companies, radio and record shops, motels, cold storage firms, office supply firms, milk companies, grain companies, broadcasting studios, supermarkets, auto garages, insurance companies, cleaning and drying clothes.

The list goes on and on of those businesses so far removed from the construction industry but whom the SBA seems to find as their only friends.

It was really more than amusing to find that the undertaking or mortician profession was also represented in these letters. We suspect that they may have buried a few business failures in the construction industry but we seriously doubt that in preparing the corpse for burial that they were able to extract any fair knowledge of the construction industry or the application and effects of the set-aside program in this industry.

Again, we submit that the industry, both management and labor, did not ask for the program, they do not need it, they do not want it, and the public cannot afford it.

We respectfully urge passage of S. 757 and believe that it will serve the best interest of the Government, the industry, and the taxpayer.

MR. ASKEW. I might add in closing, Mr. Chairman, a final note that simply stated we in the construction industry—I believe all of our union people and certainly a great majority of our employers want to preserve a condition where the Government is servant of the people and not our masters, and we fully believe that the continued activity of SBA in the set-aside program will eventually and ultimately result that our Government in and through and by SBA has become our masters.

We would hope that your committee would give favorable consideration to the legislation.

Senator PROXMIRE. Mr. Askew, that is a very impressive statement, strong, vigorous. Certainly you express your viewpoint mighty persuasively. We are very grateful to you.

Thank you very much. I appreciate it. I hope you will provide the additional information I asked for.

(Information later supplied by Mr. Askew follows:)

INTERNATIONAL UNION OF OPERATING ENGINEERS,
Washington, D.C., May 14, 1963.

HON. WILLIAM PROXMIRE,
New Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: When I testified before your committee on S. 757, May 8, 1963, I was requested to furnish additional information on certain points contained in my testimony.

I testified (p. 87) that bids had been requested upon 11 construction contracts at the Mississippi test site and that 4 of these contracts had already been awarded and that all of them had been set aside for small business. Senator Paul H. Douglas requested the names of the firms to whom these contracts had been awarded and that I identify them as to which company was union and which was nonunion. Upon checking this matter again, I found the following. As of May 9, 1963, five construction contracts had actually been awarded. All were set aside for small business. Three went to nonunion firms, and two went to union firms. They were as follows:

1. Construction of fences awarded to Tanner Heavy Equipment Co., Box 201, Waynesboro, Miss. Company operates nonunion.
 2. Construction of acoustical laboratory facility contract awarded to Linden Construction Co., Box 156, Silverhill, Ala. Company operates nonunion.
 3. Driving of piling for test stand. Contract awarded to W. R. Fairchild and J. W. Snowden Construction Cos. (joint venture). Companies operate nonunion.
 4. Modification of existing building for office. Contract awarded to Carter & Mullings, Inc., Post Office Drawer 112, Columbus, Miss. Company operates union.
 5. Drilling of well. Contract awarded to Layne Central, Box 10206, Jackson, Miss. Company operates union.
- In addition to the foregoing, bids have been requested upon the following work:
6. Construction of docks and roads; estimated cost \$500,000.
 7. Excavation for lock; estimated cost \$1 million.
 8. Clearing for C-5 complex; estimated cost \$250,000.
 9. Construction of emergency building; estimated cost \$300,000.
 10. Warehouse and site maintenance building; estimated cost \$2 million.
 11. Preparation building and observation bunkers; estimated cost \$450,000.

All of these contracts have also been set aside for small business. Source of the foregoing information is from the U.S. Corps of Engineers.

I was also requested (p. 102) to furnish further information with reference to the percentage of a total prime contract which is normally given to small business by subcontract by the general contractor. This, of course, would differ from one type of construction work to another. However, it has been our general experience that on highway work, subcontractors would be given up to 50 percent of the total amount of work; while on building construction, subcontractors would do between 70 and 85 percent of the work. These figures are arrived at by the long experience of our international union, and my personal experience of 28 years in the construction industry. I would suggest, however, that contractors and their associations might also be requested to furnish information on this point in order that your committee might have a more complete picture on this matter.

I testified that there were 33 documented cases where set-asides had cost our Government \$593,084.02, which would not have been the case had there not been set-asides. I was requested to document and furnish this source of information. I took these figures from the record made before your committee in June of 1962, and is found on pages 180 and 181. I have attached copies for your easy reference.

(The tabulation may be found on pp. 127-128)

During my testimony, I made the following statement (p. 103) :

"Apparently, the cost is of more concern to us than they are to the SBA, whose answer to the charge that set-asides have cost an added several hundred thousands dollars to the cost of the Government doing business in the construction industry is as follows :

"The very purpose of the (small business) act and the provisions of the Armed Services Procurement Regulations negate any thought that the procurement must be obtained at the lowest possible price."

I was requested to furnish the names of the persons making that statement. This statement was taken from materials furnished by the Comptroller General of the United States, under covering letter dated June 22, 1961, addressed to the Honorable Phil Weaver. For your information, I have enclosed a copy of the Comptroller General's letter and the materials attached to his letter. (See p. 108.)

Since Senator Douglas displayed particular interest in this point, I should like to observe further that when the House military construction appropriations hearings were being held during the 87th Congress, several Government officials made statements on this point and I quote them as follows :

"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." "

The final point upon which I was asked to furnish additional information resulted from my making the following statement : "Except for missile site construction during 1962, small firms were awarded upward of 75 percent of all military construction contracts. This did not include subcontracts given to small firms by general contractors having a prime contract." I was requested to furnish the source from which these figures were derived. From research over a considerable period of time these figures were derived primarily from the following publications :

1. (U.S. War Office) "Contract News" prepared as a service to its industrial partners by Industry Relations Branch, Office of the Chief of Information, Department of the Army, Washington, D.C.

2. (DA PAM, Department of the Army) "Prime Contracts" placed with industry, nonprofit organizations, colleges and universities.

3. "Missiles and Rockets" published by American Aviation Publications, Inc., 1001 Vermont Avenue NW., Washington, D.C.

Trusting that this information may be helpful to you and members of your committee, I am,

Sincerely yours,

PAUL A. ASKEW,

Representing Building and Construction Trades Department, AFL-CIO.

B-145424.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 22, 1961.

HON. PHIL WEAVER,
House of Representatives.

DEAR MR. WEAVER: This is in further reference to your letters of March 13 and June 19, 1961, requesting certain cost data on the effect of small business set-asides in military construction contracting and to a subsequent meeting held March 20, 1961, with Mr. Hatch, of your staff. At the meeting it was agreed that we would review two specific contracts, one involving the construction of a hospital at Sheppard Air Force Base, Wichita Falls, Tex., and the second providing for the operation of a Government-owned concrete-mat-producing plant at Greenville, Miss. It was also agreed that our review would be limited essentially to development of the pertinent facts relating to award and administration of the two contracts. The information we have obtained is contained in the attachment hereto.

We trust that the information furnished meets the purpose of your interest in these matters.

Sincerely yours,

JOSEPH CAMPBELL,

Comptroller General of the United States.

SHEPPARD AIR FORCE BASE HOSPITAL CONSTRUCTION PROJECT

On October 10, 1960, the U.S. Army Engineer district, Fort Worth, Tex., issued an invitation for bids for the construction of a 300-bed hospital and related facilities at Sheppard Air Force Base, Wichita Falls, Tex. The project was advertised as a small business set-aside, and B. L. Abbott Construction Co., Houston, Tex., submitted the low bid of \$4,315,877. However, the low bidder was subsequently disqualified because of a Small Business Administration (SBA) ruling that the company was not a small business concern. The contract was then awarded to the second low bidder, Lawless & Alford, Inc., which submitted a bid of \$4,482,255, or \$166,378 more than the low bid. As bidding on the project was restricted to small business concerns, we have no basis for estimating the additional cost, if any, that resulted from setting aside this contract for small business.

This was one of the first small business set-asides of military construction work resulting from an August 19, 1960, agreement between the Assistant Secretary of Defense (Supply and Logistics) and the Administrator, SBA. In earlier years, small business was getting a substantial share of the military construction program, and set-asides were apparently not considered necessary. However, a decline in awards to small business in fiscal year 1959 and early 1960 caused a reappraisal of the situation, and resulted in the August 19, 1960, agreement. The agreement provided that the Department of Defense agencies would consider that SBA had requested to be set aside, for exclusive participation of small business, each future construction project estimated to cost less than \$500,000; individual procurement valued at more than \$500,000 would be considered for set-aside on an individual cases basis. The Sheppard Air Force Base hospital was in the latter category, and prior to issuance of invitation for bids for this project, the local SBA representative requested the district to set aside the project for small business. The request for the set-aside was made under authority of the Small Business Act (15 U.S.C. 631) and was based on the criteria in SBA regulations and, the Armed Services Procurement Regulation

(ASPR) for the set-aside program. District officials were reluctant to limit the bidders, in view of the size of the project, but did agree to the SBA request and issued advance notice to the construction industry on September 30, 1960, that the project was set aside for small business. Invitations for bid were issued on October 10, 1960, showing the project as a total set-aside for small business.

Subsequently, the engineer contracting officer reviewed the historical records of previous hospital construction in the Fort Worth District area to determine the potential result of the set-aside and concluded that setting aside a job of this size would not provide a reasonable expectation that bids would be obtained from a sufficient number of responsible small-business concerns so that an award could be made at a reasonable price. The local SBA representative was advised on October 28, 1960, of the corps' intent to withdraw the set-aside. Subsequently, the Deputy Administrator of SBA requested the Secretary of the Army to decide whether the project should remain set-aside for small business.

The major SBA arguments for retention of the set-aside, as discussed in letters of November 14 and December 21, 1960, to the Secretary of the Army, were as follows:

1. There is no requirement that "reasonable price" shall be the lowest possible price which can be obtained if the procurement is awarded under unrestricted bidding. Only "reasonable expectation" that "reasonable prices" may be obtained from bidding restricted to small business is the test. The very purpose of the act and the provision of the Armed Services Procurement Regulation negate any thought that the procurement must be obtained at the lowest possible price.

2. An Army analysis of fiscal year 1960 continental U.S. military construction awards in the \$4 to \$10 million range is considered irrelevant since the case involved is an individual set-aside at a specific location and the only relevant facts are those pertinent to the question of whether there is an expectation that bids will be obtained from a sufficient number of responsible small concerns so that award of a contract for the construction of that project may be made at a reasonable price.

3. SBA made a review of the Fort Worth District Engineer's current lists of bidders and found that 30 or more of the 40 firms listed were small-business concerns. SBA also contacted nine small contractors which had received drawings and specifications on the project and found that seven of the nine had stated that they would bid and could perform on the specific project.

4. The project met all the criteria of law and regulation for a total set-aside exclusively for small-business participation, and there was a reasonable expectation that bids would be obtained from a sufficient number of responsible small-business concerns so that an award could be made at reasonable prices.

5. After the bids were open, and prior to award of a contract, if the contracting officer found that the bid prices of the small-business bidders were unreasonable, he could then properly initiate the withdrawal of the joint set-aside determination.

The position of the Corps of Engineers was that small business was not sufficiently competitive for contracts of the size of the Sheppard Air Force Base hospital to warrant a total small-business set-aside. This position was based on two factors: a comparison of the bidding pattern of large and small business on three hospital jobs awarded in the Fort Worth District area and an analysis of advertised construction contracts ranging from \$4 to \$10 million awarded during fiscal year 1960 in the continental United States by the Corps of Engineers.

Senator PROXMIRE. I am going to ask Mr. Ancle Tester, who I understand has an appointment and has a very short statement, to come forward and make his appearance. Then we will call on Mr. Dunn.

**STATEMENT OF ANCLE C. TESTER, ON BEHALF OF ASSOCIATED
GENERAL CONTRACTORS OF AMERICA, INC., AND NATIONAL
SMALL BUSINESS ASSOCIATION**

Senator PROXMIRE. Mr. Tester, I understand you represent the Associated General Contractors of America.

Mr. TESTER. That is correct, Mr. Chairman.

Senator PROXMIRE. You have no printed statement?

Mr. TESTER. I have no printed statement.

For this year, I would, however, ask that you include, for the record, my statement of last year.

Senator PROXMIRE. That will be made available. The hearings of last year are available, but we will have them available to all members of the committee.

Mr. TESTER. Right. And I would like to add a correction if I may on page 8 of my testimony at the top where it says, Mr. Chairman, "In speaking for the construction industry." I would like to add in there "and the small business contractors." And I would like to read to you a letter in support of that statement.

Senator PROXMIRE. This year you speak for the small business contractors as well as for the construction industry? Is that correct?

Mr. TESTER. That is right. And myself, individually, as a contractor.

Senator PROXMIRE. Well, now, is this a formal group? Is this an association?

Mr. TESTER. This is an association. If I may read this letter and offer it for the record—

Senator PROXMIRE. All right. Go ahead.

Mr. TESTER. It is addressed to Mr. Ancle C. Tester, vice president, John Tester & Son, Inc., Clinton, Md.

DEAR MR. TESTER: We have reviewed the statement you are filing with the Senate Banking and Currency Subcommittee on Small Business and concur with your views as to the problems raised by small business set-asides in the construction field.

We therefore support your position in favor of S. 757.

In concurrence with our contractor membership, we believe that passage of this legislation will alleviate many of the hardships now being complained of by smaller members of the construction industry.

Sincerely,

JOHN A. GOSNELL,
General Counsel, National Small Business Association.

Senator DOUGLAS. Would you send that forward, please?

Mr. TESTER. Yes, sir.

Senator PROXMIRE. What was the agency again?

Mr. TESTER. National Small Business Association.

Senator PROXMIRE. Do you have any description of this organization?

Mr. TESTER. Its headquarters office is locally organized, locally in the District of Columbia. I am a member—

Senator PROXMIRE. It is a national organization?

Mr. TESTER. Yes, sir. It has about 40,000 members I understand.

Senator DOUGLAS. On the reverse side of this sheet the trustees and officers are listed. I would suggest, Mr. Chairman, that the names of these gentlemen be made part of the record.

Senator PROXMIRE. Yes, indeed. Excellent suggestion.

(The information referred to follows:)

NATIONAL SMALL BUSINESS ASSOCIATION TRUSTEES AND OFFICERS

- Frank M. Cruger, chairman :
 President, Indiana Manufacturers Supply Co., Inc., Indianapolis, Ind.
- Lloyd E. Skinner, president :
 President, Skinner Macaroni Co., Omaha, Nebr.
- Eugene B. Brownell, vice president :
 President, Kurz & Root Co., Inc., Appleton, Wis.
- R. W. Bowers, vice president :
 Vice president, Wells Manufacturing Corp., Three Rivers, Mich.
- Carl A. Beck, vice president :
 President, Charles Beck Machine Corp., King of Prussia, Pa.
- Harry Baker Jordan, vice president, Winter Park, Fla.
- J. B. Parker, vice president :
 Secretary-treasurer, Grogan Supply Co., Atlanta, Tex.
- W. G. Winters, Sr., vice president :
 President, Texas Telephone & Telegraph Co., Houston, Tex.
- Fred Zutavern, vice president :
 Executive vice president, Walnut Creek Milling Co., Great Bend, Kans.
- Richard H. Simpson, treasurer :
 President, Charles A. Bennett Co., Inc., Peoria, Ill.
- Harry E. Brinkman, executive committee :
 President, Cincinnati Lithographing Co., Cincinnati, Ohio.
- L. M. Evans, executive committee :
 Chairman of the board, Telectron Co., Fort Lauderdale, Fla.
- A. F. Mathews, executive committee :
 President, Consolidated Freight Co., Saginaw, Mich.
- Russell C. Barlow, Tacoma, Wash.
- W. G. Bledsoe, Topeka Petroleum Co., Topeka, Kans.
- Bailey Bockman, president, Bockman Granite Corp., Sparta, Tenn.
- John E. Creevy, general manager, Dixie Parking Service, New Orleans, La.
- Collins C. Diboll, partner, Diboll-Kessels & Associates, New Orleans, La.
- Frederick W. Holderle, president, Holderle Bros., Inc., Rochester, N.Y.
- Thomas B. Huff, American Serum Co., Sioux City, Iowa.
- A. L. Mechling, president, A. L. Mechling Barge Lines, Inc., Joliet, Ill.
- Eugene Powers, executive vice president, Thordarson & Meissner Co., Mount Carmel, Ill.
- J. Lloyd Rickert, Rickert Industrial Supply Co., Milwaukee, Wis.
- Raymond M. Sim, president, Washington Woodworking Co., Washington, D.C.
- F. Wirt Waller, vice president and treasurer, the Henry Walke Co., Norfolk, Va.
- John A. Gosnell, executive secretary and general counsel, Washington, D.C.

DIVISION DIRECTORS

- Joseph D. Henderson, director of southern division, New Orleans, La.
- Vern Nelson, director of Pacific division, Chico, Calif.
- Milton King, director of north-central division, Pontiac, Mich.
- Ray Jones, director of Midwest division, Topeka, Kans.

Mr. TESTER. If I may, since I have not prepared any statement, Mr. Chairman, I was hoping perhaps maybe the whole committee would be here, and I would like to speak sort of like a contractor. I have a problem of presenting to you the real information, as Professor Dunlop has, as Paul Askew and others have. But basically I am a contractor, and maybe my views might be helpful to you in making up your mind as to the good of this legislation.

Our encounter with SBA on the Dulles Airport job last year has changed completely our method of doing work. We owned previously to that about \$250,000 worth of equipment, equipment which we could have performed the two jobs with. One we got and one SBA said we could not have.

I sold that equipment. We are now no longer bidding any work that has anything to do with SBA set-asides.

Senator PROXMIRE. Your firm would qualify? Is that correct?

Mr. TESTER. It is presently qualified, having an average now of about \$5.5 million. This year I think we may run about \$6.2 million.

Senator PROXMIRE. So you are qualified?

Mr. TESTER. So I am still a qualified small business.

For one thing, we are not bidding because of regulations, the sub-contracting procedures.

We are constantly worried because we never know when the contracting officer writing his specifications may slip a little sleeper in there which would be just one more thing that we might stumble on and not see that would cost us money or cost us the job.

Why? We have special conditions, extra conditions, supplemental conditions, general conditions. We have a book 2 inches thick in which at least a third of that book is made up of contractual obligations which we agree to do and which we have to memorize. And in every instance when we are figuring a job we go through every—

Senator PROXMIRE. I hope in presenting your testimony you are isolating the peculiar and particular burden caused by the set-aside program.

Mr. TESTER. That is correct.

Senator PROXMIRE. There is, of course, all kinds of data required for any kind of Government procurement of any size.

Mr. TESTER. Right.

Senator PROXMIRE. But what you are talking about is what is required of those who bid on set-aside?

Mr. TESTER. That is correct, sir.

Senator PROXMIRE. And only on set-asides?

Mr. TESTER. That is correct.

Senator PROXMIRE. All right.

Mr. TESTER. I am making my case based on the fact that I no longer bid the work because of the complications required. And, as I stated, we never know when these regulations may be changed, and we will not catch it, or something, and it would cost us money. Either we lose the job because we did not see something that we could cut \$5 off or some other way.

Now, I would just like to have this committee if they could, and I know they cannot, sit with me someday when I am preparing a bid for a project. Call it a small business job, \$200,000, \$500,000, \$1 million, or whatever it may be. You would be amazed at the number of sub-bids we get, and they are all on the telephone.

They call me up and they say, "My work for cleaning the windows is \$150."

"OK. Good."

"How does that look?"

"Well, you're in line. Don't worry about it. If I get the job I'll talk to you."

I mean it is from \$150 up to \$200,000 or \$300,000. These bids are called in to us and given to us by all of the contractors, people we have made friends with over the period of years and people we know that can stand behind their price and are capable of doing the work.

Senator DOUGLAS. Mr. Tester, the acoustics in this room are very poor, and I think you speak with a low voice. What was it that you were just testifying about bids which are called into you?

Mr. TESTER. I said you would be amazed at the number of subbids we get when we are preparing a contract for a prime bid to the Government on either a small business set-aside job or any other type of job. It runs into the hundreds.

Senator PROXMIRE. Yes, but all we are considering here, of course, is the set-aside.

I am informed by the staff counsel here that once the set-aside has been made the SBA is out of it. It has no more to do with it, and it is no different than any other except it has been set aside. There are no more requirements on reporting subcontracting or anything of this kind.

Is this right or wrong?

Mr. TESTER. Mr. Chairman, from my information I think you are wrong, because the requirement under our subcontract procedures is that we maintain some type of equitable opportunity for small contractors to compete with one another. We must establish a small business subcontracting program.

Like I say, I no longer figure the work, and I have not figured a job for almost—

Senator PROXMIRE. I think this has nothing to do with set aside—that subcontracting program. That is something that has to do with regular defense contracts of all sorts whether it is subcontracted or not.

I understand you might resent that program, but that is something aside and apart from this bill. This bill would have nothing to do with that.

Mr. TESTER. Well, nevertheless, Mr. Chairman, it complicates an already complicated business.

Senator PROXMIRE. I understand. I think that is a good point.

Mr. TESTER. And, as you know, a contractor—well, I have been in business now for 20 years, and I can well remember in the years 1930, 1931, 1932, 1933, and 1934 and on up into the 1940's Congress advocated, mind you—and it has nothing to do with SBA but it does have something to do with subcontracting—a general contractor, a prime contractor must do 25 percent or more of his own work. At that time we had a lot of complaints from subcontractors who thought maybe we should subcontract, and they were bargaining, buying, and so forth, in our trades.

Slowly but surely in the specifications there was a requirement that the contractor bidding on Government work should perform not less than 25 percent of his own work, and on that basis throughout the years that is how we built our business—on performing that portion of the work.

When we ran into the job at Dulles, mind you, this job required that the contractor be able to do 50 percent of his own work. We were in position to do that because it required underground excavation, and so on and so forth.

Then the second bidder comes along. He took the job. He was the third bidder. Same requirements. He immediately turned around and let his work out to someone who could do outside work. I suspect the firm who did that work was a large firm.

The Corps of Engineers send out a pretty good brochure on work available for bids. I have noticed lately that they have made the work that is available for SBA defined small firms as less than

\$500,000. That was not the case previously, because some of them were running \$500,000, \$600,000, and \$700,000.

Senator PROXMIRE. They still do, some of them. It is not limited to \$500,000; but generally.

Mr. TESTER. I have noticed in this area generally all the work is \$100,000, \$200,000, \$250,000, and it clearly states that the thing is in the \$500,000 category.

While I have retrenched, in essence, in my equipment, in the sale of my equipment, that has in no way stopped my ambition to become a large contractor. I want to do \$7.5 million. I want to do \$10 million. I have an ambition. I have an ambition to grow. And the only basis of my growth is the ability to provide bond. And the ability to provide bond is a fact that I am willing to sign a personal indemnity with a bonding company and put up all my money.

And then here is a job right close to my area, Andrews Air Force Base—it is only about 2 miles away—which we could well figure, which we could manage well, with my own personal attention for that matter. I do not want to figure it. I am afraid.

I move on up and I am presently doing schoolwork for the county, State, and municipalities. I am not even figuring any Federal work. And that was the nature of all my work previously.

Personally, I think the SBA—I have no argument with SBA, no fight with them—are doing a splendid job in many instances. But there is one thing I disagree with on what they are doing, and that is this set-aside. I just do not think it is fair. I do not think it is fair to tell me today that I am small, tomorrow that I may be large, or any of those things.

If they want to loan some of the people money, that is all right. They can set up the program so they can pay it back. There is nothing wrong with that. If I needed the money I would ask for it myself.

But I say again that SBA could help us far more than having just set-asides by circulating information among all the people that these projects are available and where to find the information, and how you can bid—all the things that the people really need to have. Then let the man get out there, hire estimators that are competent, and so forth. Let them quit interfering with competition.

Basically, that is the very backbone of our country as far as construction is concerned—this competition. You take it away from some of us, all of us, and you sort of kill what ambition we have, every one of us, to grow to be something a little more tomorrow, and then hope maybe that your son would come along behind you and do more and more work.

I would like, if I may, to answer a question that Senator Sparkman made in connection with the plumbing industry and their testimony as being in favor of this bill, or I mean opposed to the bill. You know, they have a little ax of their own to grind.

For years they have advocated the separate contract system. And, Mr. Chairman, this is an excellent spoke in their wheel to eventually ask you to enact legislation to give them the separate contract system.

I as a general contractor do not buy the separate contract system. I think the general contractor has a responsibility here of obtaining a prime contract and performing his work.

I think I could give you also the average of subcontracts in our industry; 85 percent of our contracts—of the cost—goes to subcontract-

tors, and it goes to small ones. Let me explain. You take a mechanical contractor. Normally mechanical work runs 25 percent of a contract. That is broken down in plumbing, outside utilities, sheet metal work, pipe covering and heating, and you might add air conditioning.

Now, you take one contractor who quotes maybe on a package deal. He in turn breaks that up into each of these categories and lets his contract in the form of a subcontract. But on the overall basis the general contractor cuts up his work to the extent that he subcontracts out 85 percent. And the 15 percent he normally does is supervision of the job, including all the cleaning required for all the trades, including the concrete work. He normally will perform the concrete work because that is a control item, so he can get the work. He controls that so he can keep the job going.

And normally he will do his carpentry work, his finished carpentry and rough carpentry, because those are control items on the completion of the work.

Senator PROXMIRE. Mr. Tester, I do not want to cut you off, but you did testify last year. I think you made a good statement today. And I understood that you wanted to go on only for a very few minutes. That is why we put you on ahead of Mr. Dunn.

Mr. TESTER. My testimony is ended.

Senator PROXMIRE. Thank you very much. We are glad to have you with us.

STATEMENT OF WILLIAM E. DUNN, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ACCOMPANIED BY WALTER JAENICK, STAFF MEMBER

Senator PROXMIRE. Our last witness is Mr. Dunn, and we welcome you once again, Mr. Dunn. You were here last year and made a strong statement. We are glad to have you here again.

Mr. DUNN, I hope you will identify the young man with you. I understand he is a very brilliant young man. We are honored to have him here too.

Mr. DUNN. Senator Proxmire, I am accompanied by Walter Jaenicke, a member of the staff of the Associated General Contractors.

Senator, I appreciate this opportunity to be before you. I know the hour is late. I will ask if we may file our statement for the record and highlight it now.

Senator PROXMIRE. You can indeed. I am very grateful to you for that; that is wonderful. File it and highlight it.

What we want to get especially on the record is the attitude of the contractors in America toward this legislation on the basis of your being executive director and qualified to speak for many of them.

(The prepared statement of Mr. Dunn follows:)

STATEMENT OF WILLIAM E. DUNN, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

My name is William E. Dunn. I am executive director of the Associated General Contractors of America, the trade association made up of more than 7,400 general contracting firms engaged in the construction business. Our membership is composed of contractors doing building construction, highway construction, and heavy engineering construction. The association has 127 chapters and is represented in all 50 States.

AGC is the one trade association representing all major categories of general contractors. The association was founded in 1918 at the direct suggestion of President Woodrow Wilson, who, after his experience in the First World War, had recognized the need for a national association of contractors to represent the construction industry in dealing with the Government. AGC has developed close working relationships with various Government agencies dealing with construction, and has enjoyed their respect and confidence over the years. These working relationships have resulted in the solution of many problems facing both the Government and the general contractor, and has led to the saving of countless tax dollars.

Mr. Chairman and members of the committee, I am sure you are familiar with the position of the Associated General Contractors on the bill, S. 757, which would eliminate construction from the Small Business Administration's set-aside program. Last year, it was our privilege to testify in favor of a similar bill, S. 3096, which was approved by this committee. During last year's hearing, AGC submitted detailed evidence on the adverse effects of the SBA set-aside program not only on the construction industry, but also on the U.S. taxpayer. These adverse effects continue to this day. AGC still strongly supports this legislation. It is our hope that the committee will renew its position taken last year and give favorable consideration to S. 757, and that the full Banking and Currency Committee will then be given the opportunity to express its opinion on this measure which vitally affects the construction industry.

In seeking legislative relief from the SBA set-aside program in construction, neither AGC nor its membership could be considered as "against" small business. We are for small business—because we are small business; but we are against strange and artificial programs designed to help some small firms at the expense of the American public. In 44 years as a national trade association, AGC had been unaware of the existence of any "class" distinction between large and small firms until SBA stepped in with its set-aside program, which the industry did not ask for in the first place. Competition within the construction industry has been an individual matter, with contractors competing against each other as individuals—not as members of one "class" or another. In all the years of our existence as an association, we have never heard any complaints about nor experienced any problems relating to large versus small contractors. Both have been able to prosper and compete successfully under the free and open competitive bidding system.

It is the strong belief in free and open competition on public work with award to the lowest responsible bidder that is back of the construction industry's opposition to the set-aside program in construction.

At two national conventions, the association has officially adopted resolutions opposing the application of the set-aside program to the construction industry. Our board of directors on two occasions also has expressed opposition. Of the 127 AGC chapters—which are autonomous—76 have notified the national association that they have gone on record opposing SBA set-asides in construction.

The free and open competitive bidding system on public work has been traditional in the construction industry. It assures Government contracting agencies of getting full value of their construction dollar and provides maximum safeguards on the use of public funds. Under this system, the dangers of political and other favoritism in the award of public work is avoided. Any deviation from this system exposes both public officials and the construction industry to the obvious charges that could be made regarding the award of contracts. Congressional leaders and others have recognized these dangers, and the efforts to place more and more Government procurement under formal advertising certainly reflects this attitude. Until the advent of SBA set-asides, construction contracts on public work had been awarded almost exclusively on the basis of free and open competition. Now, however, set-aside construction contracts are not the result of open competition, but of restricted bidding. This was pointed out last year by Mr. Graeme Bannerman, the Deputy Assistant Secretary of Defense, who said in testimony before another Senate subcommittee: "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 negotiation or by Small Business restricted advertising. The Comptroller General had advised that all of such procurements must be reported as negotiated."

The SBA set-aside program collides full force with the system of free and open competitive bidding, because it bars so many wholly qualified and experienced construction firms from bidding on many Government contracts. It has been quite disturbing to see more and more large contracts, ranging up to \$4 million, being set aside for so-called small business bidding only. Last year, AGC submitted to this committee a compilation of examples of increased cost on set-aside projects resulting from rejection of the low bidder as being "big business." These examples which are part of the record of last year's hearings showed an average increased cost of 4 percent due to the low bidder's rejection. This cost the taxpayers \$593,084 but only scratches the surface of the subject. It is impossible even to estimate the total cost of set-asides because construction firms that are qualified by every standard in the world except the SBA size standard customarily do not submit bids on the majority of set-aside work. They have learned through sad experience that their bids are simply thrown out as nonresponsive.

The information which we did develop was based on bids made by firms which SBA later determined could not qualify as small business. These were bona fide bids and the rejected low bidder in some cases fought to uphold his claim to an award. These bids were submitted in good faith by contractors unfamiliar with the relatively new set-aside procedures. The charge that any were not submitted in good faith disregards the fact that the bidder must have had a bid bond, and would not place himself in the hazardous position of submitting a bid on which he was unable to follow through. This year, as the set-aside program has become more familiar to contractors, there have been relatively few cases where a large contractor mistakenly submitted a bid on a set-aside job. It costs a great deal of money to prepare a bid and contractors do not ordinarily work up bids on jobs they are barred from bidding just because they have been labeled "big business." However, I would like to cite several examples we have received, which further illustrate the increased cost to the taxpayer resulting from the lack of free and open competition on public work.

An AGC firm out of Baltimore, Md., submitted a low bid in June of 1962 on a Corps of Engineers project for conversion of Martin plant No. 2 at Bengies, Md. The Baltimore firm submitted its bid believing it was "small business" under the SBA size standard change from \$5 to \$7.5 million which was announced in June of 1962. The size standard change, although announced in June, did not take effect until August and so the Baltimore firm, who would have qualified under the \$7.5 million size standard was rejected as a nonresponsive bidder. The award was made to the second low bidder at an increased cost to the taxpayer of \$13,488, which represents an 8-percent increase over the original low bid.

In another case, an AGC firm in San Diego, Calif., submitted a low bid for driveway alterations at the U.S. border station, San Ysidro, Calif., in November 1962. The bidding invitation specified that the job was a small business set-aside but listed the outdated SBA \$5 million size standard figure as the small business definition. The San Diego firm believed that the new \$7.5 million definition applied and that the 25-percent differential for firms in labor surplus areas also was in effect. The firm, however, was determined to be "large business" by the regional director of SBA in Los Angeles and the award was subsequently made to the second low bidder, whose bid was 24 percent higher than the original low bid. The San Diego firm protested their case through their elected representative to the Comptroller General, who in part replied: "In regard to the question of whether the awarding of the contract to the second low bidder is, because of the price disparity involved, in the public interest, we have recognized that *it may be proper to pay premium prices to bidders for the purpose of carrying out the small business policy.*" (Emphasis added.) In this case, it was a 24-percent premium.

In one final example, the low bidder on a bank stabilization project in Lincoln County, Ark., was rejected after a protest that the firm was not "small business" was upheld. The job was awarded to the second low bidder at an increased cost of \$15,140 to the taxpayer (or a premium of 12 percent).

Although the cases cited above are few, they do still point up the premium paid by the Government on set-asides. Of course, we do not imply that on every contract the large firm will underbid the so-called small firm. This is not true, for small firms are consistently able to outbid larger firms on work which they have the capacity to perform. This is one of the reasons the set-aside program in construction is unnecessary—the small construction firms have never needed a Government subsidy or crutch to stay in business or to compete against any firm, whatever the size. This was clearly set forth by Mr. Daniel K. Fordice,

partner of the Fordice Construction Co., Memphis, Tenn., when he testified before this committee last year. Mr. Fordice, whose firm's average annual volume is about \$1 million—small by any standard, including SBA's—commented:

"We have never been the successful 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. * * *

"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."

Another danger of the set-aside program in construction relates to its pyramiding effects on engineering estimates. These estimates are prepared by the contracting agency to provide a guideline for determining the estimated cost of a construction project for bidding purposes. Contracting officers use past experience as a basis of determining these costs. Clearly, 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. This was attested to by Maj. Gen. L. E. Seeman, Director of Installation Office, Deputy Chief of Staff for Logistics, in recent testimony before Congress, who said: "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."

S. 757 would also have the effect of eliminating the burdensome SBA requirements on subcontracting as they apply to construction. These regulations, although not yet uniformly enforced, represent a time bomb which, if set off, could destroy the time-tested subcontracting system in construction.

As applied to construction contracts, they include requiring the prime contractor to establish a small business subcontracting program, to designate a liaison officer to handle the program, and to maintain extensive records on subcontracting policies with small firms. These are just a few of the more onerous aspects of the program. The prime contractor, however, after receiving the contract then must "assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for preparation of bids. * * *". Construction contractors normally base their bids in part on other bids received from subcontractors. In these situations, the prime contractor relies on the judgment which comes from his working experience with the subcontractors in making his selection. This is a very sensitive area with construction contractors, and involves not only their skill and judgment but also their business relationships with the subcontractors. However, the subcontracts are solicited before the bid on the prime contract is submitted. To be required further to solicit "small" subcontractors after the award of the job can only result in the unsavory practice of bid shopping, which AGC has consistently opposed. Bid shopping—that is bargaining with subcontractors for a lower price on a subcontract after the prime contract has been awarded—only disrupts relations with subcontractors and promotes distrust. The SBA subcontracting program encourages this practice.

The set-aside program has shown itself to be harmful in certain definite ways to the construction industry. I will list briefly some of the most pronounced ill effects of the program:

(1) It upsets the traditional competitive bidding system at the expense of the taxpaying public.

(2) It encourages subterfuges leading to job brokerage simply in order that a statistical showing may be made that small firms are getting more contracts. A large firm unable to bid on set-asides may quite legally take a job on subcontract from a smaller firm approved by SBA. As an example, a company engaged in flood construction work in the lower Mississippi Valley was low bidder over a period of several years on a number of Corps of Engineers contracts. During the last year, however, this firm has not been permitted by the set-aside program to bid on a single Army Engineers project in its area. The firm has obtained subcontracting work on eight set-aside contracts, but it may be fairly presumed that the money the Government formerly saved on the company's low bids is not being saved now.

(3) The set-aside program stultifies initiative by placing a premium on reliance on Government subsidy.

(4) It puts a penalty on success, whether by large or small firms.

The interference by the Small Business Administration in the construction industry through the set-aside program is unnecessary. This fact is evident just by examining the primary argument used by SBA to justify the continued imposition of this program in construction. Using statistics on military construction, where most of the set-asides are made, SBA cites the decline of prime contract dollars going to small firms over recent years. They point out that small firms received 72 percent of the prime contract dollars in military construction in 1958 and that this figure has fallen since that time to less than 50 percent for the current fiscal year. Thus they conclude the set-aside program is necessary to protect the small contractor, and to insure that he receives the never-defined "fair share" of Government construction dollars.

This argument overlooks several extremely important facts. One is that the 72-percent figure achieved in 1958 by small firms was done without any help from the set-aside program which was not even in effect in construction at that time. The other fact is that since 1958 emphasis in military construction has shifted heavily to missile base work, which even SBA Administrator John Horne has admitted cannot be done by small firms. In fact, many missile jobs have required joint ventures between two and more of the larger contractors. Nevertheless, most of the military construction dollar is now being spent in this field, on work beyond the capability of small firms, so quite naturally a decline in the prime contract dollars going to small firms has taken place. Recent Corps of Engineers figures indicated that two-thirds of their prime contract dollars went for Air Force ICBM construction, of which only 6 percent could be awarded to small firms. But in the categories of construction other than missile work small firms were still receiving the greater share of military construction dollars, as high as 82 percent in Army construction during a recent 9-month period.

Another major fact never mentioned by SBA is the vast amount of work subcontracted to small firms by the larger contractors.

In other than military construction, the Bureau of Reclamation in 1962 awarded \$59.3 million in contracts to small business of which only \$7.6 million resulted from SBA set-asides. Similarly in the last 6 months of 1962, on civil works handled by the Corps of Engineers, \$86 million was awarded to small firms of which only \$49 million resulted from set-asides. During the entire year the Corps of Engineers awarded 1,168 contracts of which a total of 864 went to so-called small firms.

It is clear to the members of AGC that small firms were able to obtain the great majority of military construction dollars before there even was a construction set-aside program and are still able to do so in the categories of construction within their capabilities. Our members also know the emphasis on missile base work has been responsible for the temporary decline in the percentage of military construction dollars going to small firms and that as the missile program nears completion small firms will again receive the greater percentage of these dollars. And they know this will happen without the dubious "assistance" of the Small Business Administration.

AGC and its membership feel, then, that sufficient reasons do not exist to permit any tampering with the free and open competitive bidding system traditional in the construction industry by restricting any qualified firms from bidding on public work or by discriminating against one class of contractors to the benefit of another. Both the taxpayer and the system suffer and the Government no longer receives the best construction on public work at the lowest possible price.

In summarizing my testimony, I would like to emphasize these points:

1. Set-asides in construction are entirely unnecessary. The industry is composed of small- and medium-sized firms, and in its traditional free and open competition provides full opportunity for small businesses to obtain a fair share of contracts.

2. The entire construction industry is on record in opposition to set-asides—general contractors, mechanical and specialty contractors, and construction labor all say the program is harmful. It is no secret that officials of Federal contracting agencies are also opposed to set-asides. Such a program which the industry did not ask for, does not need, and does not want, and which had done demonstrable harm to the industry, should not be forced upon any group of American businessmen and workers by a Government agency.

3. Set-asides are costing taxpayers more for Federal construction than they would have to pay under the time-tested system of open competitive bidding on

public works. It is against the public interest as well as the welfare of the construction industry.

The contractors I have the privilege to represent are highly self-reliant and proudly consider their industry among the last strongholds of rugged individualism. They know that reliance on any Government agency for their existence is dangerous, for the same Government that puts them in business or keeps them there can also control their business or put them out of it.

Mr. Chairman, AGC urges the committee to repeat its wise decision made last year by approving S. 757.

Mr. DUNN. I would like to say, Senator, that the position of the Associated General Contractors has not changed in the last year. We are still opposed to the Small Business Administration's set-asides.

Senator, there were questions asked this morning as to who was responsible for these set-asides, and it seems like the blame is being shifted back and forth between the Small Business Administration and the contracting agencies. Whoever it may be, they should be stopped. And if it is the SBA or the Corps of Engineers that is doing it, it does not make much difference to the contractor who is precluded from bidding. It does not make much difference who is responsible so long as it is stopped.

Our suggestion is that this can be corrected by the passage of S. 757, which would eliminate the set-asides—period.

I know that once we get into these jobs that are set aside in construction we get up to around \$5 million, \$7 million—\$4 million is not infrequent—which are set aside for so-called small business firms. Then the hue and cry goes up as to who is to blame for this. And the SBA will say it is not their fault, that it is the Corps of Engineers that did it or someone else.

Well, we cannot blame the Corps of Engineers, Senator, if they have an additional 10-percent quota to increase small business participation in construction procurements levied on them. They have to increase last year's set-asides in an effort to meet this quota. And that is exactly what they have.

Last year they had an additional 10-percent quota they had to raise and increased their set-asides, and another 10 percent has been levied this year.

I speak for the Associated General Contractors of America. As much as we dislike the set-asides that emanate from the Corps of Engineers, it would seem that they are required to do this, under policies that are enunciated by the Small Business Administration. And the Small Business Administration has representatives in each contracting agency.

I have identified our association. I have stated in my filed statement that we are largely small business firms, by the SBA definition. Yet, Senator, we have never had any class distinction in the Associated General Contractors of America.

When this organization was organized in 1918, at the request of the then President of the United States, he did not ask that we assemble all the small ones or the big ones. And until 1953—and 1958 in particular—there was no distinction in our industry between large and small.

As another witness said here earlier, the largest contractor in the United States does less than one-half of 1 percent of the total volume of construction.

We have estimated as a result of some studies that the largest six contractors in the United States do a combined total of less than 2 percent of all the construction done in the United States.

There are no General Motors, no Du Ponts, or Western Electrics and General Electrics in the construction industry. So it is inherently a group of small, mobile, competitive organizations.

Why do we support this bill? We support it as the only way to get legislative relief, because, first, set-asides are not necessary in the industry. They are costly. They result in subterfuges which are now in effect.

I said they were costly, Senator, and so far there has been a question as to how much they cost. If you do not take the lowest qualified bidder, you are going to pay for it. I said the lowest qualified bidder; those who are able to put up a bond and put in a bid ought to be the ones who can qualify.

Now, if you do not take the lowest qualified bidder you are in the area of restrictive bidding, and this, we say, costs the U.S. Government, on the basis of the figures that we can assemble, 4 percent on the amount of money that is set aside.

I wish we could get some more figures to back up this general claim we believe to be 4 percent. And this is only on the basis of those who are permitted to bid. You see, if you were not allowed to bid, you would not know whether you were low or not.

Senator PROXMIRE. As I recall, yesterday the Administrator was unable to specify how much was set aside. He did say something about small business getting, as I recall, around half a billion of the \$1.1 billion of construction contracts.

Mr. DUNN. I can say this, Senator: The construction industry has a record on the amount of contracts going to small business firms as defined by SBA of about 47 percent, on the statement of Mr. Horne, and yet the average in the country is 17 percent. Let's say it is a half billion.

Senator PROXMIRE. Four percent of that would be about \$20 million.

Mr. DUNN. Right.

Senator PROXMIRE. So if these figures are right—I am not holding you to my figures, but 4 percent is your figure—you would say this is a cost of \$20 million, unnecessary cost, to the taxpayers?

Mr. DUNN. Let's qualify it this way, Senator: that that which is set aside and goes to the set-aside contractor can be subject to a round estimate of 4 percent.

Now, just because some work goes to small business firms does not mean it was because of set-aside. Many small firms get the job because they are low bidder.

Senator PROXMIRE. That is why I wanted to distinguish. We were not able to get that from the Administrator yesterday. I wanted the difference between that which was set aside and that which small business secured in total military construction. As I understood, it was \$500 million of \$1.1 billion that they got. How much of that \$500 million was set aside, I do not know. I do not think we had the figures yesterday. At any rate, your estimate is it would be 4 percent of whatever was set aside. If it was about half a billion dollars it would be about \$20 million additional cost.

Mr. DUNN. That is right. In any event, this is an interesting factor. The overall average of business going to small business in the Federal procurement, out of some \$26 billion of Federal procurement, is now only 17 percent going to small business. Do you know what the construction average is? Forty-seven percent. I wish that

the other industries had such a record. And that is one reason why we do not need the help of SBA.

Our case is this, Senator: That construction is different. It is different in so many ways. It is different because it is made up of small business firms. It is different because they subcontract much of the work by the very nature of the business. Mr. Tester just said that he subcontracts 85 percent of some of his work. Now, immediately that goes to smaller firms. Now, is that true in any other industry? No, it is not. That is why we are different. Inherently, the nature of the business is subcontract work to smaller firms. It is also different in that it is highly competitive.

Again, it is different because there are small firms that are able, because of their low overhead, to come in and underbid the firm with the large overhead. And if you are qualified and you have the right makeup to make a contractor—and you must be a risktaker—you can be the low bidder. But you must be able to put up bond. You must be able to assemble the best team of subcontractors and skilled craftsmen that has ever been assembled. And you are outwitting and outgambling your competition.

Now, is that true in any other industry? No, it is not. And that is why we do not need the help of SBA to come in and help us. We have never asked SBA's help. This is something that was pushed upon us as an industry.

We know it is highly competitive on any kind of job. There are many bidders. I do not care whether it is Federal or private work. So we think that SBA is determined to grow. It has been called the largest and fastest growing agency in the U.S. Government. I cannot prove it. Again those statistics are in their control. But, whatever it is, it is growing too fast as far as we are concerned.

They are extending out into larger set-asides, extending into more and more. They are not satisfied with our record of 47 percent as compared to the general average of 17 percent.

We have a theory here I would like to call your attention to. It is the law of diminishing returns by SBA. You know before we had set-asides the average that went to small firms was 70 to 80 percent. Let's say 75 percent. After set-asides were started by SBA, it went down to 65 percent. Then there was a hiatus. That was the period where there was no set-aside. They were testing, checking. It went up again. This is in 1958.

SBA went back into the set-aside business. It went down to 53 percent. And now it is down to 47 percent.

The simple truth of it is, Senator, that those who start fooling with statistics can get hurt unless they know exactly what they mean.

The cry comes here that we must have more set-asides because the percentages are going down.

Let's look at the size of this missile work that no small firm, whether it be \$10 million or \$7.5 million, or what it may be, can perform. It is impossible for them to perform.

Of course, back in 1954 when they had a 25-percent average going to small business all across the board, there was \$11 billion national defense, and now we are up to \$26 billion, largely because of national defense and missile work.

So we think as far as small business records are concerned, statistically it was better before SBA began set-asides.

And I do not see that the interference with free competition and the annoyance and the cost and the favoritism and discrimination that result from an SBA set-aside are worth it.

You know it has been said that, "Well, if it is going to small business firms, why do you care if SBA sets it aside?" The answer is: "It is the principle involved." Why should SBA play favorites with anyone? Is it wrong to be large? Are there small citizens and large citizens? Small voters and large voters?

A contractor that has \$7.5 million in volume is just as good a citizen and just as good a contractor as one that has \$6 million volume.

We have actual cases that are quite interesting. You know they have changed these set-aside figures and the size standards. It was about a year ago when we were here. And about that time they changed the size standard of a small and large contractor from, you remember, \$5 million to \$7.5 million.

About that time one of our contractors right over here in Baltimore, by the name of McGuire, read where they increased the size standards to \$7.5 million, and he bid a job that was set aside for small business. The name of the firm is Kirby & McGuire. It is in my statement.

But I think it is important to note that he felt that he was qualified to bid this job. And when he found out that he was not really small business, that he was still big business because the order had not gone into effect yet, here was a man who one day was large and the next day was small. But there was a delay and he made the bid and he was low bidder but they would not let him have the job because they said that order changing the size standard did not go into effect for a couple of weeks, "so, Mister, you can't get it. You are still big business."

So the result was it cost the Government 8 percent—as a matter of fact, \$13,488.

Now, was Mr. McGuire a better citizen after the size standard went up to \$7.5 million? No, he was the same man, always entitled to try to be the low bidder. That goes right across the board. And he would not have been the low bidder if he was not the most qualified and did not have the sharpest pencil.

We do not like to discriminate against McGuires that are doing \$7.5 million or those doing \$6 million. The whole principle is wrong—of discrimination against those who are qualified to be low bidder.

We have letter after letter in our files—and it is in my statement—of the small firm who can and does underbid the larger firm.

So we are not asking for this kind of interference and this kind of help from SBA.

As far as the others are concerned who may want set-asides in other industries, we cannot speak for them. We do not know what is good in other industries. But as far as this industry is concerned, as far as the general contractors are concerned, union, open shop, large, small, we want no part of anything that interferes with free and open competition, because once you do that you open the door to favoritism and discrimination.

And the facts have been told, or at least SBA does not recognize them, that basically our organizations in construction are small and that we subcontract to small firms. And they ignore every dollar's worth of work that is subcontracted in determining what goes to small firms.

I would like to clear up a point that may have arisen as a result of Mr. Tester's statement. He did point out something that was necessary, and that is that S. 757 would require that every general con-

tractor who has a Federal job to file information as to who his subcontractors are and as to their size.

Now, that is very important. Here is the data that they are all asking for. How much is subcontracted out? They do not have to go to the Census Bureau for this. As a matter of practice today, the general contractor with a prime contract files his subs' names with the Federal Government, and all he has to do is fill in the amount of the contract and the size of the contractor. There you will get the information you want.

As it is today, because of some regulations that SBA has issued with GSA and the Corps of Engineers and the Defense Department, Mr. Tester, if he gets a Federal job, if he is low bidder and gets the contract, has to go out and solicit bids of a lot of people he does not want or he may be subject to violation of the contract.

Now, these are regulations that are issued under a law that you sponsored. Yet I do not think you realized then what they were going to do with your law as it applied to construction.

We think that will all be corrected by S. 757. As a matter of fact, there is a section in here, section 4, that would take care of that. It would do away with this business of having to go out bid shopping after you are the low bidder.

And that is what I think Mr. Tester had in mind. Certainly what we have in mind is what is in our statement.

In the interest of time I will close and say that our association is solid on this. We may find—and you may hear from them—an individual, even a chapter who is opposed to our position. But I have never seen such unanimity in an industry.

Senator PROXMIRE. Very good. I just have a couple of very brief questions.

In the first place, I would appreciate it if you would document that 4-percent figure, because it would be very helpful. It contradicts what the Comptroller General told the Joint Economic Committee about a month ago when he asserted that there was no cost in his judgment, additional cost, to the Government through the set-aside program. The Defense Department has also testified to the same effect.

I am inclined to feel there must be cost, but I would like to have as much documentation as you can give. You have given us excellent examples, but any additional documentation based on any either analysis or statistics would be very helpful.

Then there is one other thing that I would like to know. You say on page 3: "Our board of directors on two occasions also has expressed opposition"—I presume to the set-aside program. "Of the 127 general contractors chapters—which are autonomous—76 have notified the national association that they have gone on record opposing SBA set-asides in construction."

I wonder if any of your chapters at any time has gone on record in favor of set-asides or against this bill?

Mr. DUNN. One.

Senator PROXMIRE. One has?

Mr. DUNN. One has to my knowledge. And those between 76 and 127 just have not said anything.

Senator PROXMIRE. I understand. But 76 have taken a position against set-asides, one has taken a position for set-asides?

Mr. DUNN. Right. All chapters are represented through the board of directors and through their convention.

Senator PROXMIRE. Has your convention taken a position on this?

Mr. DUNN. Twice.

Senator PROXMIRE. Very good. Thank you very, very much, Mr. Dunn. I appreciate your patience in waiting. I appreciate your testimony very much.

Mr. DUNN. Senator, one more thing. I would like to introduce in the record at this time a letter from the Mechanical Contractors Association of America.

The plumbing contractors have been mentioned here. I have this letter in which they support this bill.

Senator PROXMIRE. Fine.

(The letter and a memorandum accompanying follow:)

MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC.,

New York, N.Y., June 7, 1963.

Mr. A. WILLIS ROBERTSON,

Chairman, Senate Banking and Currency Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR ROBERTSON: I take this means of informing you of our association's full support of S. 757 which will eliminate the construction industry from the SBA set-aside program.

We are a group of 2,100 contractors engaged in plumbing, heating, air conditioning, process and industrial piping work throughout the United States. Aside from other arguments that have been presented to you, I am attaching hereto a memorandum which outlines the harm that can be done by a bureaucratic approach to the administration of the present act.

We have found here in the New York City area that all automatic sprinkler work over the last few years has been set aside as small business. How people, like ourselves, who specialize in this type of work are supposed to exist and pay taxes, I do not know. By setting aside all this work because the contracts are not under \$500,000 indicates that these people have no conception of the sprinkler business. We have not had a \$500,000 sprinkler job in this area in years. When we complained to the district engineers or the SBA they tell us that if we do not like it, we should get the law changed. I am appealing to you for that very purpose.

The only reason I can understand why the SBA wants to operate in the construction industry is to build up the volume of business that they handle so that they can indicate to Congress what an important job they are doing which, in turn, I presume might help justify their existence.

I respectfully enlist your support of S. 757.

Most sincerely,

ROBERT K. RAISLER,

Chairman, Legislative Committee.

MAY 3, 1963.

From: Robert K. Raisler.

Subject: Small business set-asides, in the construction industry.

Like all bureaucratic Government operations, small business set-asides started on a small scale but it has now gotten to the point where the set-aside program on certain types of work where the jobs do not run large, seems to include every job. In other words, the whole industry is set aside for small business and those who regularly operate in this field are excluded simply due to size, which size is determined by the SBA in their own arbitrary manner. I particularly refer to automatic sprinkler installations in this area.

As you know, in the contracting business, prequalification is required by the city of New York and many other agencies before a concern is permitted to bid. Such qualifications seem unimportant to the SBA and being small in size is all that matters. Experience, organization, financial background, shops, and equipment are of no concern.

In certain cases where bids were received for dredging, the low bidder was disqualified as being unresponsive to the invitation to bid and the work was awarded to a so-called small business contractor at about a 20 percent higher price. This contractor did not even own dredging equipment and subcontracted this work to the low bidder. This, of course, is a double edged sword for the taxpayer and for the legitimate construction industry.

The Associated General Contractors of America submitted 40 examples of increased cost to the Government as a result of the set-aside program. The worst

part of this is the injustice to the legitimate contractor who specializes in this type of work. Many of these small business concerns are not financially qualified to borrow from banks or factoring institutions which makes them bad risks, yet the SBA proposes to push them into this program and finance them, which, in the long run, may result in serious losses to the SBA unless the prices these people receive for their work is fantastic, as there is no substitute for experience and know-how in the construction industry. The construction industry, as a whole, is small business as it is made up of many operations; trucking, subcontractors, general contractors, architects, engineers, etc., most of whom operate in their own league and create larger work as they grow. This is an orderly procedure. If this great volume of construction work is set aside for so-called small firms and mushroom operators who spring up, the rest of the industry is going to find itself in cutthroat competition with the risk of failure and bankruptcy. I am sure that is not what the Congress intended.

With all that is being done today such as the liberal mortgage market and small-house building program by the Government, it is unnecessary to be further concerned by the so-called small contractor. This whole program is an "Alice in Wonderland" situation as the small contractor who obtains the job under the SBA rules, can become a large contractor overnight.

Mr. DUNN. I would like to ask a question. Is it possible to clarify this question of what it costs to have set-asides? The method that the Comptroller General and others have said cannot get accurate figures; if some are not allowed to—

Senator PROXMIRE. They do not say you can get accurate figures. They say there are none.

Mr. DUNN. Yes.

Senator PROXMIRE. They say, I mean, there are no additional costs.

Mr. DUNN. Take the case of the low bidder that was knocked out after they found he was big. He was allowed to bid because at first they thought he was small. Then they threw him out because 2 weeks later he was found to be big.

Senator PROXMIRE. I think that is a good example. They say they do not accept these lower bids of the bigger firms because they are not qualified anyway and the bid is just for the purpose of making—

Mr. DUNN. Do they think they are playing games?

Senator PROXMIRE. Apparently. I did not say that.

Mr. DUNN. We have 40 cases. That is where this \$500,000 comes from. Of course, if they were allowed to bid—

Senator PROXMIRE. I want to make clear that I will accept that kind of evidence as very helpful evidence but I want to say that others have indicated they would not accept it because they claim that it was not a bona fide bid. But any information you can give us will be very helpful. I am sure the members of the committee will weigh it.

Mr. DUNN. Thank you.

Senator PROXMIRE. Thanks a lot.

(A letter with enclosures supplied by Mr. Dunn follows:)

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,

May 14, 1963.

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

DEAR SENATOR PROXMIRE: In accordance with your request during my testimony May 8 on the bill (S. 757) to eliminate construction set-asides, there is enclosed a list of 40 cases showing an average increased cost of 4 percent to the taxpayer resulting from the rejection of the low bidder on small business set-aside jobs.

As we pointed out in our testimony, these figures resulted from low bids submitted on set-aside contracts which were then rejected on the ground that the bidders were large firms. Since contractors have become more familiar with the small business set-asides and size standard regulations, there are now very few additional examples. However, from these cases alone, the premium prices

paid for rejection of the lowest responsible bidder on set-aside jobs averaged 4 percent. In one case this 4-percent premium amounted to \$166,378.

It is difficult to estimate how much higher these percentages could run since so-called large firms now rarely bid on any set-aside work. Bids are quite expensive to prepare, the cost usually running into thousands of dollars, and they involve a great deal of time and effort. Contractors will not waste their efforts bidding on jobs which they know they will not receive. In the cases submitted, many of the low bidders were rejected because of their affiliation with larger companies, or because they believed they qualified as small firms, but were ruled otherwise by the Small Business Administration, or because of their unfamiliarity with SBA regulations.

Another salient point brought out in the hearings related to the great amount of missile work being done in military construction. Both SBA and the Defense Department admit that small firms are not capable of performing this work at the prime contract level. I respectfully invite your attention to the table on page 117 of last year's hearings before your committee. This table indicates that of military construction awards by the Corps of Engineers in a recent 9-month period, approximately two-thirds of the dollars awarded went to Air Force ICBM, or missile base, construction. Small firms received only 6 percent of these dollars and a similarly low percentage obtained on NASA construction. However, in the other categories of construction, up to 83 percent of the dollars went to small firms. These statistics, coupled with the 72 percent of military construction dollars going to small firms across the board in 1958 (before there was a missile program or small business set-aside program in construction) clearly indicate how unnecessary this program is in the construction industry.

Your courtesy and thoughtful attention to this legislation which so vitally affects our industry are deeply appreciated.

Sincerely,

WILLIAM E. DUNN,
Executive Director.

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.-----	(3)	(3)	(3)	(3)
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.-----	(1)	(1)	(1)	(1)
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	137,536.00	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

¹ Figures not applicable.

² Details as to names of bidders and amounts bid not specified.

³ 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 Schluter-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 uccir, 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
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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
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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
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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. Telchert & 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.....	8,096
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 curbing,
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
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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
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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
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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
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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
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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

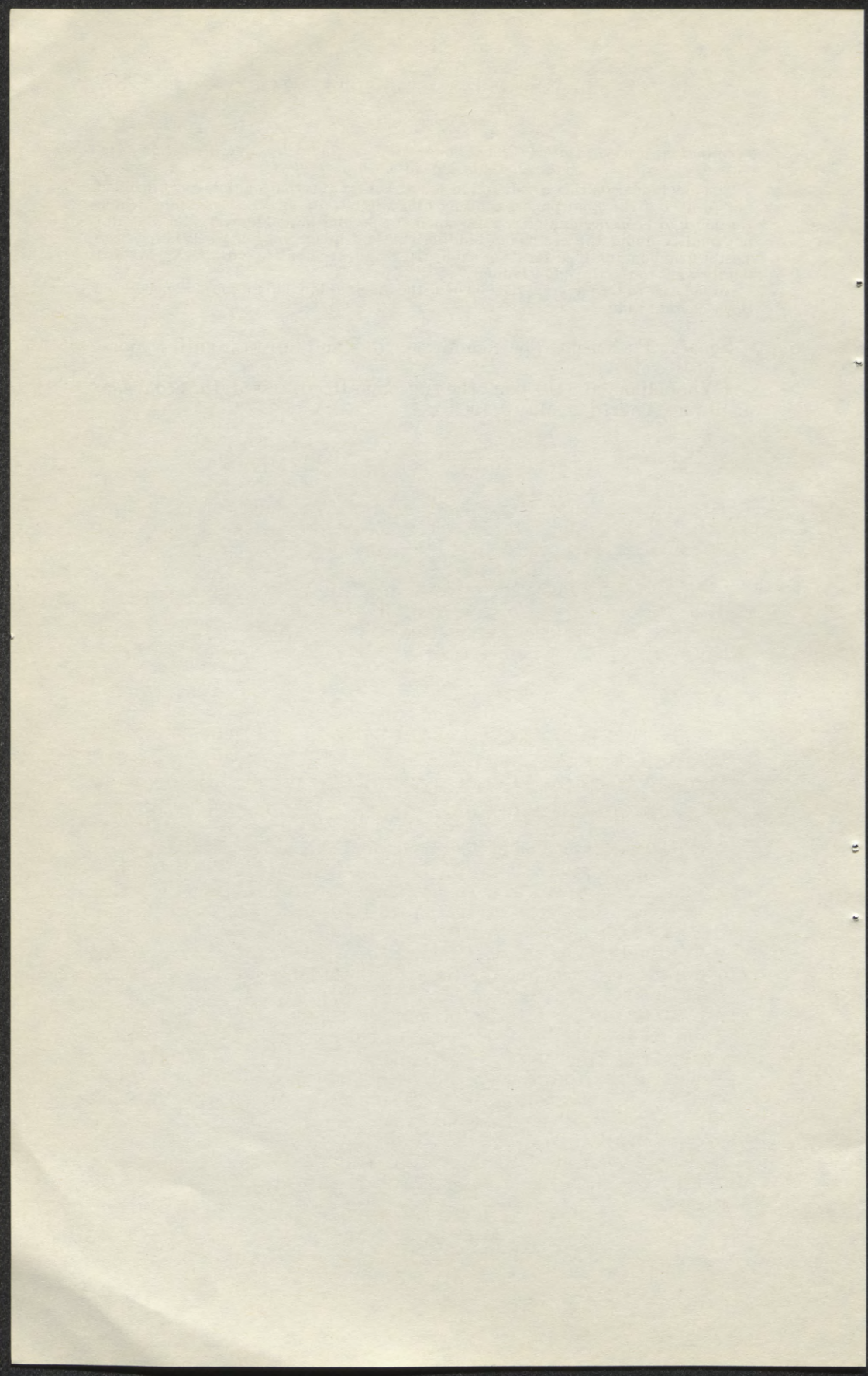
Terminal yard work, Dulles International Airport, Chantilly, Va., invitation date, June 22, 1961; bid date, July 27, 1961

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.

Senator PROXMIRE. The committee will stand in recess until tomorrow at 10 o'clock.

(Whereupon, at 1:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, May 9, 1963.)



CONSTRUCTION SET-ASIDES, 1963

THURSDAY, MAY 9, 1963

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

The subcommittee met, pursuant to recess, at 10:05 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire (chairman) and McIntyre.

Senator PROXMIRE. The subcommittee will come to order.

Hearings on S. 757, Government contract set-asides for small business, a bill that would eliminate these set-asides, will resume.

Our witness this morning is Mr. Graeme C. Bannerman, Deputy Assistant Secretary of Defense (Supply and Logistics), accompanied by Mr. Richard Webb, Director of Small Business Policy.

We are very happy to have you, Mr. Bannerman. You are certainly one of the ablest men in the administration, and every time I have seen you come before a committee you have done an outstandingly fine job.

Proceed in your own way.

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

Mr. BANNERMAN. Thank you, Senator. Our testimony today is on what I believe is an identical bill to the one on which we testified last year. Our statement in connection with this bill is identical with our statement last year except as we have updated certain of the statistics which were contained in the statement at that time.

Accordingly, if it is satisfactory with you, I would just like to introduce the statement for the record rather than read it at this time.

Senator PROXMIRE. Very good.

Mr. BANNERMAN. I think perhaps it might serve some purpose if I did read a very brief statement of our conclusions that appear at the end of the statement.

Senator PROXMIRE. Very good. And it would also be helpful—perhaps I am anticipating—if you bring up to date the statistics.

Mr. BANNERMAN. We have done that. I believe Mr. Webb has left that with Mr. Barnes.

Senator PROXMIRE. I would like to have you do that on the record, for the record—tell us briefly what they are—when you finish your statement.

Mr. BANNERMAN. Fine. Perhaps we can put that in immediately after I simply read the conclusions that appear at the end of my statement.

Senator PROXMIER. I very much appreciate your abbreviating your testimony this way. It is very helpful.

(The prepared statement of Mr. Bannerman, together with the statistical tables referred to, follow:)

STATEMENT OF GRAEME C. BANNERMAN, DEPUTY ASSISTANT SECRETARY OF DEFENSE
(PROCUREMENT) (INSTALLATIONS AND LOGISTICS)

I am happy to again have the opportunity to discuss with this committee the defense small business program, particularly as it relates to construction work. My prepared statement on the subject of set-asides in construction work is substantially the same as my statement last year. We have, of course, brought up to date the statistics relating to small business participation in construction awards. With your permission, in the interest of time, I would like to submit it for the record. I would be pleased to respond to questions this committee might have on this subject.

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. When the contracting officer does not agree to a set-aside proposed by the Small Business Administration it is the Secretary of the military department concerned that makes the final determination. In the construction area, by agreement between DOD and SBA in October 1960, it was decided that SBA representatives should not be required to review every construction procurement in order to initiate an individual request to the purchasing activity that a proposed procurement be set aside for small business. To save time and manpower it was agreed that in all construction projects estimated to cost less than \$500,000 it would be assumed that SBA has "initiated" a set-aside request under the authority of the Small Business Act and that the contracting officer, if he disagreed, had the right to disapprove the set-aside. In all construction procurement over \$500,000, SBA is required to review each project before it may propose a set-aside.

(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 expected in all set-asides 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 unrestricted 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 DOD and the SBA 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 total construction dollars awarded to small construction firms dropped from 72.8 percent of the dollar value of all military construction procurement in 1958 to 65 percent in 1959 and to 50 percent in 1960.

As a result of this sharp decline, the DOD and the SBA 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 received only 47.8 percent of the total construction dollars during fiscal year 1962 and have received only 44.2 percent of the total construction awards during the first 8 months of fiscal year 1963. Thus, despite our use of set-asides to assure maximum small business participation in construction work, there has been a further decline in the dollars of construction work awarded 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 usually 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, would thereby help to maintain a healthy community of small construction firms and, hence, would assure the existence of a broadly competitive industry.

Should the price, in some individual 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 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.

We have completed a study of construction contracts awarded during a 19-month period between July 1961 through January 1963 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 covered 11,251 new construction contracts of \$10,000 or more each awarded during that period. Of these 10,636 were under \$500,000, while 615 were over this size. Approximately 8,340 of the smaller awards and only 297 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 36 construction procurements which were performed during the 19-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 36 rejected bids were \$483,590 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 \$2.55 billion with set-aside procedures being used in only 28 percent of the total dollars. The difference between the award price and the rejected price on these 36 contracts represents slightly less than seven-hundredths of 1 percent of the total cost of construction projects set aside for small business during the 19-month period. We are submitting to this committee the full results of our study.

We recognize, of course, that these statistics give no measure of what might have been bid on this work by large firms which were understandably dissuaded from bidding by the set-aside for small business. Hence, we do not claim that these figures prove anything with respect to the extra costs, if any, attributable to small business set-asides. Even in these 36 cases, the statistics purportedly showing an increased cost as a result of set-asides were based on a large business firm volunteering a low bid in a procurement reserved exclusively for small business firms. Under the small business set-aside, as you know, such volunteer bids cannot legally be accepted and the companies submitting them are normally aware of this fact. Therefore, even in these 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 considers 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.

(5) Do set-asides result in the Government receiving less than the requisite quality of supplies or substandard work in construction?

We are not aware of any cases where the Government has received less than 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 contractor as set forth in the ASPR. That is, the firm must have adequate financial resources, or be able to obtain such resources as requires 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.

Furthermore, the ASPR 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.

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 set-asides for construction and set-asides for other supplies and equipment;
4. Congress had 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.

Net amount of military and civil functions prime contracts for construction work¹ January 1961 to January 1963

[Dollars in thousands]

	January- June 1961	July 1961- June 1962	July 1962- January 1963
All contracts of \$10,000 or more:			
Total.....	\$872,655	\$1,615,586	\$934,007
Awarded to large business firms.....	439,699	876,208	541,436
Awarded to small business firms (subtotal).....	432,956	739,378	392,571
Set-asides used.....	243,147	447,584	268,373
Set-asides not used.....	189,809	291,784	124,198
Percent:			
Small business to total.....	49.6	45.8	42.0
Set-asides to small business subtotal.....	56.2	60.5	68.4
Set-asides to total.....	27.9	27.7	28.7
Contracts of \$10,000 to \$499,999:			
Total.....	\$397,017	\$674,395	\$535,589
Awarded to large business firms.....	90,900	184,962	265,340
Awarded to small business firms (subtotal).....	306,117	489,433	270,249
Set-asides used.....	210,971	352,402	204,311
Set-asides not used.....	95,146	137,031	65,938
Percent:			
Small business to total.....	77.1	72.6	50.5
Set-asides to small business subtotal.....	68.9	72.0	75.6
Set-asides to total.....	53.1	52.2	38.1
Contracts of \$500,000 or more:			
Total.....	\$475,638	\$941,191	\$398,418
Awarded to large business firms.....	348,799	691,246	276,096
Awarded to small business firms (subtotal).....	126,839	249,945	122,322
Set-asides used.....	32,176	95,192	64,062
Set-asides not used.....	94,663	154,753	58,260
Percent:			
Small business to total.....	26.7	26.6	30.7
Set-asides to small business subtotal.....	25.4	38.1	52.4
Set-asides to total.....	6.8	10.1	16.1

¹ Includes new contracts and modifications of existing contracts for construction, alterations, and repairs. Excludes contracts for architect-engineer services.

Net amount of military and civil functions prime contracts for construction work,¹ July 1961 to January 1963

[Dollars in thousands]

All contracts of \$10,000 or more:

Total	\$2, 549, 593
Awarded to large business firms	1, 417, 644
Awarded to small business firms (subtotal)	1, 131, 949
Set-asides used	715, 967
Set-asides not used	415, 982

Percent:

Small business to total	44. 4
Set-asides to total	28. 1
Set-asides to small business subtotal	63. 3

Contracts of \$10,000 to \$499,999:

Total	\$1, 209, 984
Awarded to large business firms	450, 302
Awarded to small business firms (subtotal)	759, 682
Set-asides used	556, 713
Set-asides not used	202, 969

Percent:

Small business to total	62. 8
Set-asides to total	46. 0
Set-asides to small business subtotal	73. 3

Contracts of \$500,000 or more:

Total	\$1, 339, 609
Awarded to large business firms	967, 342
Awarded to small business firms (subtotal)	372, 267
Set-asides used	159, 254
Set-asides not used	213, 013

Percent:

Small business to total	27. 8
Set-asides to total	11. 9
Set-asides to small business subtotal	42. 8

¹ 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,¹ July 1961 to January 1963

All contracts of \$10,000 or more:

Total	11, 251
Awarded to large business firms	668
Awarded to small business firms (subtotal)	10, 583
Set-asides used	8, 637
Set-asides not used	1, 946
Percent:	
Small business to total	94. 1
Set-asides to total	76. 8
Set-asides to small business subtotal	81. 6

All contracts of \$10,000 to \$499,999:

Total	10, 636
Awarded to large business firms	484
Awarded to small business firms (subtotal)	10, 152
Set-asides used	8, 340
Set-asides not used	1, 812
Percent:	
Small business to total	95. 4
Set-asides to total	78. 4
Set-asides to small business subtotal	82. 2

All contracts of \$500,000 or more:

Total	615
Awarded to large business firms	184
Awarded to small business firms (subtotal)	431
Set-asides used	297
Set-asides not used	134
Percent:	
Small business to total	70. 1
Set-asides to total	48. 3
Set-asides to small business subtotal	68. 9

¹ Includes new contracts for construction, alterations and repair works; excludes architect-engineer contracts, and modifications of existing construction contracts.

Department of Defense 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	July 1961-January 1963		Difference
	Rejected low bid	Accepted bid	
Army:			
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.....	539,092	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
Arkansas River, Ark.....	102,260	117,400	15,140
Keystone Reservoir, Okla.....	1,288,310	1,448,119	159,809
Columbia River, Wash.....	110,960	111,790	830
Libby project, Montana.....	12,125	16,927	4,802
Fort Irwin, Calif.....	184,819	194,192	9,373
Monroe County, Ind.....	1,406,467	1,443,413	36,946
Westover Air Force Base, Mass.....	1,198,900	1,203,967	5,067
Nedrow, N.Y.....	208,492	241,560	33,068
Hector Field, Fargo, N. Dak.....	258,088	258,527	439
Army total.....	8,444,298	8,906,642	462,344
Navy:			
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
NAS, Brunswick, Maine.....	31,500	31,980	480
NAS, Alameda, Calif.....	19,270	21,446	2,176
Naval Base, Newport, R.I.....	49,835	50,716	881
Naval Air Station, Quonset Point, R.I.....	23,400	23,750	350
Navy total.....	358,580	379,826	21,246
DOD total.....	8,802,878	9,286,468	483,590

Mr. BANNERMAN. As a result of the statements which appear throughout this paper, we conclude 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 set-asides in the construction industry and set-asides for other supplies and equipment.

4. Congress had indicated that it wants the Defense Department to increase the participation of small firms in defense work.

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.

The statistics that Mr. Webb has are fairly lengthy, Senator. I would suggest—

Senator PROXMIRE. What I understood you to say was the statistics which bring up to date the participation by small business in military construction.

Mr. BANNERMAN. Perhaps I could summarize one or two of the most pertinent.

Senator PROXMIRE. I would not want them broken down by site, but, if you would, just read the totals and any comparison with what they have been, and the percentages.

Mr. BANNERMAN. In construction for the period from July 1962 to January 1963 the small business percentage of the total construction work was 42 percent. Of this, 68.4 percent—of that total—stemmed from set-asides. In short, set-aside procurement represented 28.7 percent of our total construction work. I think those are the significant figures. I might say just to show—

Senator PROXMIRE. That certainly does not add up to 100 percent.

Mr. BANNERMAN. No; it does not add up to 100 percent. I did not give any figures, Senator, for the amount that went to large business.

In short, small business was 42 percent of the total. That is to say, large business was 58 percent of the total. Of that 42 percent, 68 percent of that stemmed from set-asides.

Senator PROXMIRE. I see.

Mr. BANNERMAN. Now, I might just say that the trend is that the amount of set-asides to total construction has been relatively constant for the last three periods, three semiannual periods. However, the percentage of set-asides to total small business participation has been going up rather steadily.

This, of course, means that the total small business awards have been going down somewhat during that period.

Senator PROXMIRE. Now, is his because of the fact that there is a changing content of the defense procurement so that small business construction firms are unable to bid? Well, this is not just construction contracts; this is all contracts?

Mr. BANNERMAN. The figures we have given you relate only to construction.

Senator PROXMIRE. I understand. In other words, if you have more missile sites being constructed, if you have construction of this kind which cannot be broken down efficiently and in which you cannot reduce or keep the cost at a constant level by breaking it down into smaller contracts, then you must have a relatively big construction firm bidding, and small business just has not got a chance to get into it. And there are more of those. Is that right?

Mr. BANNERMAN. That is precisely right, Senator.

I think we ought to point out small business does not have a chance to get into some of these jobs at prime contract level because of their size. An increasing proportion of our total construction budget is going into major construction projects such as these major underground missile sites.

When, as and if that work is completed and we revert to a normal pattern of construction work, I would assume the small business share would go up again.

Senator PROXMIRE. Yesterday Professor Dunlop, who is a very, very able man, as you know, testified. He is head of the Economics Department of Harvard University.

Mr. BANNERMAN. I know him.

Senator PROXMIRE. He is one of the most experienced men in construction in the country. He has had a vast amount of experience as an arbitrator and in many other respects. He is certainly a dispassionate, objective, fairminded observer.

He very much favors this bill. One of his very strong contentions was that there is a tendency with the set-aside program and with the pressure on the Defense Department to provide more for small business to break up economical prime contracts into uneconomical smaller prime contracts for the purpose of giving small business a greater opportunity and for the purpose of having greater set-asides.

I wondered about this, because I know how economy minded you are in Defense under Secretary McNamara, and we have not had any complaint from the Comptroller General on this score. But coming from a very responsible and able man like Professor Dunlop I would like to have your comments on it.

Mr. BANNERMAN. Well, I feel a little bit disturbed to find myself disagreeing with Professor Dunlop, because I know him very well indeed, and I have worked with him on several of the problems we have had, notably down at Cape Canaveral.

I think that this comment is not true generally of our construction work. I think it has been true to some extent at certain missile sites, not that we have broken it up deliberately for the purpose of making set-asides or for awarding to small business but because the work came in packages that could best be handled that way. Different groups were needed. Different prime contractor capabilities were needed to handle the work.

I think this has been particularly true at Canaveral, and I think it is at Canaveral that Professor Dunlop has had his most immediate exposure to this problem in the Department of Defense. I think this has been done there, but not for that reason.

The fact is that there are many different competencies and qualifications needed at a complicated location of that kind. That work is not all done under one single, open-ended prime contract.

Senator PROXMIRE. Recently we passed a bill, in 1961, providing for a subcontracting program with participation and cooperation by the Defense Department, with, in fact, the main responsibility for it really in the procurement agencies, Defense and Space and GSA, with some participation by the SBA.

Mr. BANNERMAN. Yes.

Senator PROXMIRE. I know there has been a conscientious effort to make this objective of Congress effective, but we have been very disturbed at the fact we do not have any figures on it. We just have not been successful in securing any data on how much construction work, for example, is subcontracted.

Now, I think a very strong contention of those who favor the bill is that all statistics on how little small business is getting mean very little because they get a great deal of the subcontracts.

One man testified yesterday that he was a moderate size, about a \$6 or \$7 million contractor, and that 85 percent of his work is subcontracted, and that there is pressure on him all the time to subcontract more. He does contract work for Defense. This from my standpoint is good. At the same time, unless we have these figures, how can we sustain the argument that small business is not getting its adequate

share of defense procurement? Subcontracting is defense work just like prime contracting.

Mr. BANNERMAN. I would like to ask Mr. Webb to speak to this, but I believe we are prepared or are preparing to furnish statistics on subcontracting generally, not only on construction work but on the total of our subcontracting effort. Are those figures not due in rather quickly?

Senator PROXMIRE. When you say "not only," will you be able to give us subcontracting in construction? I understand you are particularly likely to have subcontracting in this area.

Mr. BANNERMAN. Subcontracting in construction is going to happen whether you have a specific program for it or not because of the specialty nature of a lot of the work. It frequently can be introduced in some of our major supply contracts—that is to say, subcontracting that would not otherwise be done.

In the past there has been a tendency, as I think you are aware, for some of our prime contractors to try to hold in their own organizations work which could be done outside. I think that is less likely to happen in the construction industry.

But I feel confident that we either can or shortly will be able to furnish you statistics on the extent of subcontracting by our major prime contractors both in the major supply areas and in construction separately.

Senator PROXMIRE. You see, until we have that figure it is very hard for us really to know whether this program is working or not. We may get a feel. We may get some sense of it. But the figures, it seems to me, are the most important element of all.

Mr. BANNERMAN. Right.

Senator PROXMIRE. We have to have that to appraise it, to administer it properly, and so forth.

Mr. BANNERMAN. I completely agree. Could I ask Mr. Webb to tell us when these figures are due?

Senator PROXMIRE. Go ahead.

Mr. WEBB. After the Congress passed Public Law 87-305, the amendment to the Small Business Act which extended that subcontracting program, we, of course, started off on a vigorous subcontracting program, if I may say so, and we did not concentrate our efforts in any particular category of work such as construction.

We are happy that the amount of subcontracting in all defense work is increasing and increasing greatly.

In a report that I have of the first 9 months of fiscal year 1963, we are happy to report that \$3,139 million in subcontract payments have been made.

Senator PROXMIRE. What period was this?

Mr. WEBB. For a 9-month period of fiscal year 1963, \$3,139 million.

Mr. BANNERMAN. Through March of this year.

Senator PROXMIRE. How much was involved in the prime contracts?

Mr. WEBB. Prime contracting during that period amounted to \$19,758 million. The subcontracting amounted to 15.9 percent. This is against a subcontracting program last year of 15 percent, so we are up nine-tenths of 1 percent over the total for last year.

Senator PROXMIRE. If this were all you had in construction I would say it was not very much, and I think you would agree. Construction is quite different.

Mr. WEBB. Unquestionably. This includes everything from missiles to submarines, tanks, aircraft, and including construction.

Senator PROXMIRE. Do you have any basis for an estimate?

Mr. BANNERMAN. Senator, I would like to make it clear these figures are not the total subcontracting, but they are the total subcontracting to small business.

Mr. WEBB. Oh, yes. This is in furtherance of the small business subcontracting program.

Senator PROXMIRE. So you would add this 15.9 percent to the prime contracts small business gets, most of which presumably it performs itself, which is another 15 percent?

Mr. BANNERMAN. Slightly higher than that, Senator.

Senator PROXMIRE. Slightly higher. So a total of over 30 percent of the defense work perhaps was done on this basis, just roughly, by small business?

Mr. WEBB. For the first 9 months 31.7 percent went to small business through prime or subcontract payments.

Mr. BANNERMAN. There may be more than that, Senator, and my guess is there is considerably more than that. At the lower tiers of subcontracting, below which we are not able to trace it, there is additional subcontracting to small business.

Senator PROXMIRE. In the construction industry, as I understand it, it was 72.8 percent of prime contracts that went to small business back in 1958 at a time when there was no set-aside.

Mr. BANNERMAN. That is correct.

Senator PROXMIRE. Now, with the set-aside, it is gone down to less than 40 percent—37 and a fraction or something of that kind—which suggests with the set-aside program the amount small business is getting is half of what it was proportionately when you did not have a set-aside program.

Mr. BANNERMAN. Senator, as you said earlier, the mix in types of work being done under our construction program, largely as a result of the missile programs, has been changing rapidly over that time.

The reason we feel that set-asides should be retained is that we want to make as sure as we possibly can that that portion of the business which remains and is entirely suitable for small business will in fact be awarded to small business.

I do not think there is any question but what this decline in this total small business share would have been marginally greater had there been no set-asides during that same period.

Senator PROXMIRE. We should have asked the Administrator of the Small Business Administration this question, but perhaps you know. Has there been any change in definition? There is some feeling on the part of our staff that it may be that back in 1958 the definition of small business for construction was 500 employees and that later it became \$5 million gross, and 500 employees probably would include a lot larger firm than \$5 million gross, if you had 500 employees as an average during the year, because during the winter the number of employees is small.

Mr. BANNERMAN. There was a change in definition as you pointed out. I understand from Mr. Webb that that change occurred in 1958.

The trend of decline in total small business participation in prime contracts for construction has been continuing since that time, again

in my judgment as a result of the changing mix in the kinds of construction work.

Senator PROXMIRE. What this really suggests to me is that this is an industry, the construction industry, which is really quite different than the others, inasmuch as you just do not have big business in construction. You have firms that are very big but, as was brought out by Mr. Askew yesterday, you do not have any firm that does more than one-half of 1 percent of the construction in this country. The biggest six construction firms do less than 2 percent.

Contrast that with the automobile industry where you have one firm that does 50 percent, and aluminum where you have one firm that does more than a third. It is apparent that this is a peculiarly small business operation in which competition is extremely intense.

The basic position taken by Professor Dunlop—and I wish you would give your view on this—is that where you have intense competition you do not need this kind of protection or set-aside for small business that you might need where competition is very weak and small business is at a disadvantage.

Mr. BANNERMAN. Senator, I would not be disposed to argue with Professor Dunlop on that point. I think it is very clear that where you have intense competition the need for taking special steps to foster awards to the smaller segments is less important.

I might add this is not confined to the construction industry. I could name one other industry. You have intense competition in electronics these days. There are many, many electronics firms—perhaps a great many more than there is business to take care of them. Competition is very intense in that industry.

The same is true in many other industries where we do business. I might mention clothing. Food and subsistence, where we are a half-a-billion-dollar-a-year customer, has quite a lot of suppliers.

I think this is a legitimate factor for inquiry as to whether we should have any set-aside programs or, for that matter, any small business programs with respect to industries where there is very intense competition.

I would not even claim to express an opinion on that. I think from a standpoint of preserving competition, if that is the purpose of the program, there is less need for it in such industries as that. But it is not confined to construction.

Senator PROXMIRE. Here you have an industry in which the testimony has not been contradicted that there are 300,000 to 800,000—nobody really knows, but several hundred thousand—individual firms. You have ease of entry in this industry. There is a terrific rate of births, according to Professor Dunlop, something like 13 percent I think of the industry being new each year. You have turnover. You have deaths of 9 or 10 percent.

But you have an opportunity for people to get into this industry with great ease, and at a very small level of capitalization you have almost peak efficiency in many respects.

Furthermore, you have a mobility which makes it impossible as a realistic matter for a big firm to say, "I am going to put my competition out of business." It is almost impossible to envision a big firm saying, "We are going to knock out these small competitors of ours by bidding below cost." That is not at all impossible in retail or in some other businesses of that kind.

But here if a firm does \$2 or \$3 or \$4 million a year they are a national firm and they can bid in California or Boston or Florida.

Mr. BANNERMAN. Senator, I think that is exactly right.

Senator PROXMIRE. Therefore, you do not have to worry so much about the death of small business because big business is going to come in and take advantage of more capital until they have a monopoly.

Mr. BANNERMAN. I think that is exactly right. I would like to make perhaps two comments.

One is that I think that the huge number of firms that you have described and the ease of getting in and out of the business is true of construction generally but is less likely to be true of the types of construction that we are doing.

I think that the demands for talent, organization, management, and in some cases for facilities and equipment and large initial expenditures are likely to be greater on military construction than they are on routine home construction or repair.

In short, I think that we probably deal with the top 15 percent of that segment that you have described simply because it takes that group to do our kind of work.

Secondly, though, I would like also to point out that in the clothing business, with which we do a tremendous volume of work, and in electronics, these factors of ease of getting in and out of the business, relatively small initial investments, no large dominance of anybody in the business, impossibility of establishing dominance, are also true.

So while it may well be that the description you have made of the construction industry would not be characteristic of the major segment of our business, it certainly would be characteristic of some segments of it other than construction.

Senator PROXMIRE. When do you think you will have your information available on subcontracts?

Mr. BANNERMAN. I thought we did not have it available. Mr. Webb has just pointed out we do have it for the first 9 months of this year. I guess we are following the monthly—

Senator PROXMIRE. Broken down by construction too?

Mr. WEBB. No, sir; we do not.

Senator PROXMIRE. When will that be ready?

Mr. WEBB. Frankly—

Senator PROXMIRE. Will it be available in a few days?

Mr. WEBB. No, sir, I am sorry to say. We were not planning on getting separate subcontracting figures by commodity category or by separate function. I would like a little while to see if we cannot generate this information for the committee if it is at all possible. I am sure it must be. We were not planning on gathering it this way for our management purposes.

Senator PROXMIRE. We certainly do not want to put you to any expense that is significant, but at the same time this bill died last year because time ran out, and this bill has been introduced early this year, and I think Senator Metcalf, the author of the bill, deserves fair consideration and action this year.

This is relatively early in the legislative year. We do not want to hold the bill up unduly, but we think that it is unfortunate certainly that in this area which is so important, and in which subcontracting

would seem to be very big and where small business has a big share of that, we do not have the figures so we do not have a basis for judging the necessity of having a set-aside.

Mr. BANNERMAN. Excuse me just a moment, Senator. I think we can make some pretty quick efforts in this field and we will see what we can do.

Senator PROXMIRE. That will be great. I appreciate it very, very much. We need those statistics very badly.

(The information requested follows:)

Military subcontract and purchase payments to small business concerns by large defense construction contractors, July 1961 to December 1962

Total value of receipts of large defense contractors required to submit small business reports: \$91,733,000.

Total value of subcontracts to large and small firms: \$56,109,000.

Total value of subcontracts to small firms: \$28,415,000.

Percent of subcontracts to small firms of total subcontracts to all firms: 50.6 percent.

NOTE.—Obviously these data do not cover all construction contracts but only those prime contractors required to submit small business subcontracting reports. These reports were received over a period of one year and a half from 36 prime contractors.

Senator PROXMIRE. Now, there is one other area where statistics are awfully hard to come by. We have had some estimates by the people who favor the bill representing organized labor, but we need additional information very, very much.

There is a contention that the set-aside program operates to the disadvantage of organized labor, that the big firms are organized and the smaller firms are not, that the bigger firms, because they are organized, have greater fringe benefits, in some cases higher wages, various agreements which increase their cost, and under these circumstances they should at least have the chance to bid on the same basis as those non-union firms, that the Government should not adopt a policy which tends to discriminate against those firms which are organized and which pay their workers well and are doing it under collective bargaining agreements.

In order to evaluate this situation, we need to have some figures on whether or not it is true that the big firms are pretty much organized and the smaller firms are not.

Professor Dunlop said that the Census Bureau indicated that there was something like 80 to 90 percent of the employees in the construction industry who are organized. There has been some evidence that about 50 percent of the firms are organized. This latter figure particularly is just a rough estimate. It is very hard for us to evaluate this particular argument unless again we have the facts.

Mr. BANNERMAN. I believe, Senator, and I do not have the figures with me, but again I will try to get them for you, that our manpower people in the Department of Defense have relatively recently been keeping records of the status with respect to whether our contractors are organized or not—the construction contractors that have been getting our awards.

I have an impression from what they have told me about these figures, without having actually seen the figures, that the overwhelming preponderance of our construction awards have been made to firms which are organized.

Senator PROXMIRE. This includes the set-aside?

Mr. BANNERMAN. Even including those which stem from set-aside. (The data referred to follow:)

Union and nonunion contracts

We do not have figures for all construction but only for construction at Cape Canaveral. The following is the percentage of dollar value of nonunion construction contracts to union construction contracts at Patrick Air Force Base, Cape Canaveral:

<i>Month</i>	<i>Percentage</i>	<i>Month</i>	<i>Percentage</i>
1963:		1962—Continued	
April.....	4.1	August.....	7.3
March.....	4.3	July.....	6.0
February.....	4.9	June.....	6.1
January.....	4.6	May.....	6.2
1962:		April.....	6.8
December.....	6.3	March.....	6.3
November.....	7.9	February.....	4.5
October.....	8.6	January.....	6.2
September.....	8.7		

Senator PROXMIRE. You say that of those that stem from set-aside the overwhelming majority are organized?

Mr. BANNERMAN. I think that the original comment that you made that the large firms are almost universally organized is certainly correct. I think that a high proportion of the smaller firms are also organized.

This is a fact, of course, which, as you know, does not enter into our selection for an award in any respect. We are not allowed by law to draw this distinction in making a competitive award.

Senator PROXMIRE. I understand.

Mr. BANNERMAN. Hence, until quite recently we have not even inquired into it.

But I am told that our manpower people have been inquiring into it, and I would like to find out what figures they have and submit them to the committee for whatever they are worth.

Senator PROXMIRE. I appreciate that very much. It is very helpful.

I have just got a couple of other quick questions. One is that yesterday Mr. Dunn, representing the general contractors, estimated that the cost of the set-aside program is about 4 percent of the total value of the contracts. He estimated if there are \$500 million roughly this year set aside in military construction that it is costing the Government \$20 million more than it would if we did not have the set-aside program.

He gave some examples that were pretty persuasive, including one that was, I think, a 13-percent additional cost. Another was 8 percent. This was the additional cost over a firm that had bid thinking it might qualify, was low bidder, and was disqualified because it happened to be disqualified on the basis of size.

Now, on what basis do you conclude that any increased costs resulting from small business set-aside in construction are not substantial?

Mr. BANNERMAN. Senator, I am sorry I was not here to hear his testimony at that time.

We have summarized—and I believe the information which Mr. Webb has just given to the committee lists it—all of those cases in the last year and a half where there has been any bid which was low which had to be rejected because of the set-aside. I personally do not con-

sider these figures particularly significant, but they do show an extremely small margin.

Senator PROXMIRE. Well, now, this figure is interesting because while you only have a difference—well, I say “only.” It is money. You have a difference of \$450,000. Maybe I am not looking at the right page. On the Army and Navy together you have a difference of about \$480,000 to \$483,000.

In view of the fact that the total accepted bid was \$9 million, that is around 5 percent, is it not?

Mr. BANNERMAN. Yes, Senator. But please understand that this is an extremely small portion of the total awards that we have made during that period.

Senator PROXMIRE. I understand. But is it not true that in most cases the large firm would not bother to bid? They know they are disqualified, so why should they go to the trouble and expense and difficulty of bidding on something they cannot possibly get?

Mr. BANNERMAN. I have no idea why they would. I do not know why they did in these cases.

Senator PROXMIRE. Maybe in these cases they were close to the borderline.

Mr. BANNERMAN. This may be, or it may be they did not understand the practice, or they may be simply establishing a pattern knowing they could not get the award. I do not rely on figures of this kind.

The point is, we do not make set-asides until we have absolute assurance that there is a substantial number of qualified small business bidders to do the work. In short, we follow the congressional standard that we have assurance that we can get a fair and reasonable price.

Again, I think it is clear that any time you make an exclusion from competition you are running a risk of not getting the best price, and it is very hard to measure that except that you do know that your competition is quite intense in these cases.

Where it is not—if, for instance, we had a case where a differential of very large magnitude appeared—in short, where it appears that we have excluded somebody whose qualifications or competence, was such that it was basically bad judgment to exclude him, we would cancel the set-aside, and we have done so and reopened the procurement to full competition.

Senator PROXMIRE. In view of the fact there was \$9 million in accepted bids, and the difference between this and the rejected bids is \$483,000, above 5 percent, why would this not be good evidence that it is costing the Federal Government about 5 percent of the contracts to have the set-aside program?

Mr. BANNERMAN. Well, I would like to point out that these cases of rejected low bids came in only in a very small proportion of our total procurement. There was no evidence on the others. Our study covered 11,000 transactions, over 11,000, and there are only 36 transactions here.

Senator PROXMIRE. How much money was involved in those 11,000 transactions?

Mr. BANNERMAN. \$2.5 billion. And we are now talking about the total of the cases where there was a rejected low bid of \$480,000—seven one-hundredths of 1 percent, Senator. It is in the statement.

Senator PROXMIRE. Well, you do not know what bidding you would have had.

Mr. BANNERMAN. I do not draw any inferences from this, Senator. I present them as the only statistics we have. I think again, though, there is no reason for supposing this problem is one whit different in the construction industry than it is in any other industry.

I think any set-aside procedure, which is, after all, an exclusion, runs a risk. The point to the exclusion in a sense is to keep out potentially successful bidders who are not within this protected category.

Senator PROXMIRE. Here is the real thrust of this bill: that any American firm that employs taxpaying hard-working American citizens should have the right to bid for any Government work and should not be prohibited and excluded from it unless there is a very strong case, policy case, in favor of that exclusion.

That is why it seems to me that the burden of proof should be on those who want to maintain the present discriminatory law which excludes hundreds of thousands of workers and a number of firms and does so with increased cost to the taxpayers. The increased cost may not be very great; or it may be. We just do not know.

Mr. BANNERMAN. Senator, I think if it were the view of the Congress that we should not have exclusion provisions of this kind, discriminatory provisions if you will, there would be no argument from the Department of Defense. I think, however, that this clearly would affect the total percentage of our business going to small business.

I do not think that the argument that you have just made is in any sense confined to the construction industry.

Senator PROXMIRE. Now, that is the point. That is the point. You have agreed earlier, however, the construction industry is characterized by strong competition.

Mr. BANNERMAN. That is correct.

Senator PROXMIRE. It is characterized by no domination by any one firm, by an efficiency that can be achieved with a fairly low level of capitalization, by ease of entry, by an absence of ability for the big firm to destroy their smaller competition. Therefore, it would seem to me that it is different than many manufacturing industries.

Mr. BANNERMAN. I think it is different from many manufacturing industries, Senator. I do not disagree with that, but it is also quite similar to some others, those I have mentioned among others.

I think that a small business set-aside program simply will not work in an industry where you do not have a fairly large number of competent small business firms. If you have dominance by a relatively small number of very large firms and nobody in the small business category who is really very competent, we cannot make a set-aside because we cannot have any assurance of adequate competition among small business firms.

We cannot rule out real competence, where it is unique, in the businesses with which we do business.

Now, I would like to make it very clear that the decision to have set-asides in the construction industry and, for that matter, in defense industries generally and, for that matter, I guess in all industries in Government procurement generally, is a congressional decision, and we, of course, are following it.

Senator PROXMIRE. I do not disagree at all. I am just saying we cannot have our cake and eat it too. Either we have to conclude that

this is of some cost to the Government or it seems to me we have to conclude if we did not have the set-aside program the same small business firms would get the business without it because they would be low anyway.

Now, it must be one way or the other. If you say this is not costing the Government anything really significant, if you say these are in most cases in the 11,000 cases the low bid, then if we did not have the set-aside program it would go to the same firms who get it now. So why the set-aside?

Mr. BANNERMAN. That is not quite what I said. I would like to say it this way: I think that there is no question but what there is some slight cost to any set-aside program—that is, slight cost in the sense you are going to be paying a little more money for these current procurements. Whether this has any indirect saving by virtue of keeping people available for future competition that would not be there I do not know. In the construction industry, I frankly doubt it.

But I do not think that you can expect that the awards would go universally to the same people if there were no set-aside. There is no question, I think, but what some of these set-aside awards would have been awarded to large business. I just do not think the extra cost has been very great. There is some.

We are, of course, as you know, making every possible effort to increase our percentage of awards to small business, and this is one of the ways that we use to do it. I think our total awards to small firms would undoubtedly go down marginally if we did not have set-aside programs. I think it is up to the Congress to determine which of these they want.

Senator PROXMIRE. Fine. I want to thank you very much.

I just conclude by saying I hope you gentlemen in the Department of Defense will persist in your efforts to provide the greatest possible opportunities for small business. I happen to feel that maybe by breaking up contracts wherever it is economical and feasible—you should never do it I think where you will increase costs, and I do not think you will do it there—but wherever it is economic and feasible to make it possible for the greatest number of firms to bid, (a) you will get more small business involved and (b) you will probably do it at lower cost.

It seems to me with such a drastic drop from the 72.8 percent small business was getting back in 1958 to half of that proportion that it is getting now, it may be policies other than set-aside, which we have now and which is not working, may be more effective.

I want to thank you for your very able testimony as always and for your willingness to give us the statistics which we so earnestly need to come to a sensible conclusion on this bill.

Mr. BANNERMAN. Thank you, Senator.

Senator PROXMIRE. Thank you very much.

Mr. WEBB. Thank you.

(The following letter was later supplied for the record:)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., June 3, 1963.

HON. WILLIAM PROXMIRE,
U.S. Senate.

DEAR MR. PROXMIRE: Reference is made to the recent hearing conducted by your subcommittee in connection with S. 757 relating to small business set-asides in construction work.

During a conference with the committee staff we were requested to comment upon whether the change in the definition of a small business construction firm which occurred in 1958 had a significant bearing on the decline in the percentage of small business awards which we have witnessed since that date.

In order to fully respond to this inquiry we would, of course, have to know what proportion of the work is currently being awarded to firms with fewer than 500 employees (that being the definition of a small business construction firm prior to 1958). Regrettably, we do not have this data. As you know in conducting small business set-asides, construction firms self-certify themselves as "small firms" under the current small business size standard. As a result the only data which we have available indicates the size of the firm, that is whether it is "large" or "small" on the date of the submission of its bid. As a consequence, we do not know with certainty what effect the change in size standards in 1958 had upon the percentage of awards going to small firms. However, we do know that there has been a definite change in the character of work being performed—with a large dollar value currently being spent for missile construction sites. These sites do not offer small business opportunities. Therefore, we feel the lower percentage of small business awards is attributable to the change in the mix which we have witnessed since 1959. For example, during fiscal year 1962, the Army Corps of Engineers awarded \$506 million in missile site work with small firms taking only \$35 million or 7 percent. At the same time the Corps of Engineers in conducting other construction work spent \$264 million with small firms receiving 74 percent. These statistics make it apparent that so long as there is a heavy concentration of missile site work within the military construction program the percentage of small business awards will remain low.

If there are further questions with respect to the construction set-aside program, we will of course be happy to provide your subcommittee with the information.

Sincerely,

RICHARD W. WEBB,
Director, Small Business Policy.

Senator PROXMIRE. Our next witness is Mr. Jerome O. Hendrickson, accompanied by Mr. Harvey Hottel. Mr. Hendrickson is executive director of the National Association of Plumbing-Heating-Cooling Contractors, and Mr. Hottel is vice president of the Refrigeration & Air Conditioning Contractors Association of America.

Mr. Hendrickson, I understand you are a native of the finest of the 50 States, Wisconsin.

STATEMENT OF JEROME O. HENDRICKSON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS; AND HARVEY W. HOTTEL, VICE PRESIDENT, REFRIGERATION & AIR CONDITIONING CONTRACTORS ASSOCIATION, ACCOMPANIED BY RICHARD D. BROECKEL

Mr. HENDRICKSON. I certainly am.

Senator PROXMIRE. Very good. Sit down.

Mr. HENDRICKSON. May I introduce Mr. Broeckel, Mr. Richard D. Broeckel.

Senator PROXMIRE. Happy to have you with us. Where from in Wisconsin?

Mr. HENDRICKSON. Eau Claire. My parents still live there.

Senator PROXMIRE. Dairy City, U.S.A.

Mr. HENDRICKSON. Yes. I can see that you are very familiar with Eau Claire. We would like to present our statement first, and I

would like to dwell upon the general aspects of S. 757 as our association looks upon this bill.

Senator PROXMIRE. Fine. Now, we had hearings last year, as you know, and we have requested our witnesses to be as brief as they can, and I know you will be.

Mr. HENDRICKSON. Right.

Senator PROXMIRE. And you have seen Mr. Bannerman just put his statement in the record and summarize it. You proceed any way you wish. I do hope you will hold down your statement. We have several other witnesses this morning.

Mr. HENDRICKSON. I would like to proceed, Mr. Chairman, upon the basis of the record, upon the statement which I will give you. If you wish to interrupt me at any time, of course, we realize that is your prerogative.

Senator PROXMIRE. All right. And if you want to summarize any of this, the whole statement will go into the record.

Mr. HENDRICKSON. Right. Mr. Hottel will dwell upon the practical aspects of this particular bill.

Senator PROXMIRE. All right.

Mr. HENDRICKSON. In other words, Mr. Hottel is a union contractor participating in the set-aside program.

Mr. Chairman, I am Jerome O. Hendrickson, executive director of the National Association of Plumbing-Heating-Cooling Contractors.

By way of short background, Mr. Chairman, PHCC, as we call it, is the largest and oldest national trade association of construction industry contractors in the United States. I am here today at the behest of PHCC's 49 State affiliates and 400 local affiliates—all of whom endorse wholeheartedly the fundamental support of small business as enunciated by Congress through the Small Business Act and its numerous amendments.

The National Association of Plumbing-Heating-Cooling Contractors appreciates the opportunity to appear before this subcommittee today for the purpose of commending publicly the Small Business Administration and its most exemplary efforts on behalf of American business.

The 9,000 members firms represented by the National Association of Plumbing-Heating-Cooling Contractors are among the foremost supporters of the principles Congress outlined in section 2(a) of the Small Business Act of 1953.

Our association has followed the SBA construction set-aside program very closely over the years. On May 9, 1958, a new definition for a small business firm in the construction industry was published in the Federal Register. Later, SBA decided to hold a hearing to receive the views of interested groups with respect to this definition, and a public notice of the hearing was published in the Federal Register on November 11, 1958.

Notice of this hearing was sent to Government contracting agencies, to the Associated General Contractors of America, Inc., and other trade associations in the industry. Despite the wide circulation of this notice, Mr. Chairman, the fact remains that when the hearing convened at 9:05 a.m., on November 25, 1958, only one witness was present. That witness represented our association, then known as the National Association of Plumbing Contractors. He stated that

the definition was acceptable to us, and after a total elapsed time of 20 minutes the hearing was concluded at 9:25 a.m.

Unlike the trade associations and labor organizations which failed to appear at that publicly advertised hearing back in 1958, the PHCC was wholeheartedly in favor of the construction set-aside program then, and we are wholeheartedly in favor of it now. Therefore, we oppose enactment of S. 757.

We believe the total influence of the Small Business Administration in the construction industry has been salutary and beneficial. Of all industries that make up the economy of our Nation, the construction industry is still par excellence the one last bastion of the American small businessman and, hence, we believe the most proper field of activity for the Small Business Administration.

The overwhelming majority of our PHCC contractor members fit the SBA definition of a small business firm. Only an insignificant number do an average annual gross business of more than \$7.5 million per year. Our members have welcomed all activities of SBA in the construction industry—the loan program, the program designed to promote subcontracting by bringing small business specialty contractors into contact with general contractors, and finally the set-aside program itself.

It is true that the set-aside program affects only the prime contract and not subcontracts. It is likewise true that since the Federal Government has not yet adopted the efficient and economical method of separate contracting now utilized by many private builders and by some of our largest States—incidentally, Mr. Chairman, Wisconsin is one of those States—the plumbing-heating-cooling contractor is typically a subcontractor on Federal work.

Yet even on Federal work, the specialty contractor may be a prime contractor when the contract itself is confined to plumbing, heating, air conditioning, and the like. When this is the case, our members can, and have, benefited directly from the set-aside program.

But it is not for this reason alone that we favor the continuance of the set-aside program. It is often said by proponents of S. 757 and similar legislation that the construction industry is characterized by competition among small firms, and that it has been and would continue to be so characterized by such competition in the absence of any influence of the Small Business Administration.

Mr. Chairman, this contention is simply not true. So was the auto manufacturing industry once characterized by competition among small firms, so was the electrical equipment industry, and so was just about every other industry that today is characterized by monopoly or monopolistic competition among a few industrial giants.

What happened in those industries can happen in construction also if a positive Federal program is absent to protect small business in the public interest.

Senator PROXMIRE. There is a basic difference, is there not, Mr. Hendrickson? There is an economy of scale in the construction industry at a fairly modest level of capitalization, whereas in the automobile industry you cannot think of really producing an automobile these days unless you have all of the assembly line techniques and the kind of enormous investment that I suppose at the minimum would be the size of American Motors in Wisconsin employing some 26,000 people, making \$60 million net profit and being a small firm in the industry.

In the construction business, on the other hand, you can do a job of efficiency, and so forth, with a far, far smaller capitalization, and you just do not have the assembly line techniques, and you are unlikely ever to have them, at least in the foreseeable future. Is that not right?

Mr. HENDRICKSON. Mr. Chairman, you are describing the situation as it now exists after the giants in the automotive industry were able to take care of the small competition.

You are not referring to the Henry Ford days when there were many concerns and maybe——

Senator PROXMIRE. Henry Ford was the one who put the many concerns out of business, not because——

Mr. HENDRICKSON. I think that is true. I said in those days.

Senator PROXMIRE. And it seems to me if there had been a Government policy at that time to help small business it would have been either ineffective or would have been fantastically expensive, because there was just efficiency and economy in large-scale operations that you just could not stand in the way of without eliminating an element in our standard of living that has been very productive.

The fact Henry Ford eventually could pay his people \$5 a day, a terrific increase in wages at that time, and produce cars for \$300 or \$400 was an immense contribution to our society and to improving economic progress. And he did it because he achieved economies of scale with very high capitalization.

What I am saying is it was the nature of the technical, economic facts that enabled big business to predominate in the automobile industry. It had nothing to do with any governmental policy or lack of it.

Mr. HENDRICKSON. Well, your point is well taken. It is true that the construction industry is such that a man with limited capital can start in and can do an excellent job.

When you talked to Mr. Bannerman a few minutes ago, you mentioned larger firms. Suppose that there were no set-aside program. Would the small firms be just as able to exist and do just as good a job in the construction industry if there were no set-aside program?

Harvey Hottel has a case in point. Harvey tried to bid on Government jobs. He was turned down. He is competent. And it was because the Small Business Administration was able to intervene in his behalf that he was able to get a Government contract. He is competent, and yet in free competition he would not be——

Senator PROXMIRE. Undoubtedly there are some examples. We will hear from Mr. Hottel.

Mr. HENDRICKSON. You will get it from him.

Senator PROXMIRE. And one more point. When we did not have a set-aside program back in 1958, small business got three-quarters of all the military construction contracts. Now we have one, and they can only get a third of it.

So it seems there are other factors that are at least as important or more important.

Mr. HENDRICKSON. Mr. Hottel informs me that the Defense Department is spending 10 times the money.

But it is not for this reason alone that we favor the continuation of the set-aside program. It is often said by proponents of S. 757 and similar legislation that the construction industry is characterized by

competition among small firms and that it has been and would continue to be so characterized by such competition in the absence of any influence of the Small Business Administration.

Then I said, Mr. Chairman, this contention is simply not true, and I mentioned the auto industry—we commented on that—and the electrical equipment industry and just about every other industry that today is characterized by monopoly or monopolistic competition among the few industrial giants.

Then I want to say our PHCC contractor members were not born yesterday. They have been dealing with general contractors for years and they have observed the legislative efforts of the AGC for years at both the Federal and State levels.

Now AGC comes forward supporting S. 757, striving to eliminate the set-aside program in the construction industry. We believe that the AGC would like nothing better than to see thousands of small businessmen "squeezed out" from dealing directly with the Federal Government.

Last year, at hearings on bills similar to S. 757, numerous communications were received from small businessmen in other industries expressing the fear that if the set-aside program were eliminated from the construction industry the same move would be attempted in other industries.

Such contentions have an even more significant parallel in the construction industry itself. I refer to the hearings before a subcommittee of the Senate Committee on Banking and Currency, 87th Congress, 2d session. Many of you—that means you, Mr. Chairman—were members of that subcommittee.

In the hearings cited, at page 116, we find Mr. William E. Dunn, executive director of the AGC, complaining bitterly about the SBA loan program in the construction industry.

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; 59 other loans, or 7.6 percent, were in process of liquidation.

Mr. Chairman, there can be little doubt that if the AGC is successful in eliminating the set-aside program it will then train its gun on the loan program, and, after that, on the SBA program to promote subcontracting.

For an insight into AGC's real motives in supporting S. 757, we turn again to the Senate hearings of the 87th Congress. We find the late James Marshall, former executive director of the AGC, quoted as stating (p. 35):

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.

When the AGC says that the thing needed is one "management contractor to coordinate all these things," the whole set-aside battle begins to take on some of the aspects of former legislative struggles at both

the State and Federal levels over the single contract versus separate contract method of construction.

Of course, the AGC would like to see the single contract method of construction everywhere. This was the motive of AGC's support back in the 85th Congress of H.R. 7168, a bill which, as some of you may remember, would have established the single contract method as statutory policy for all Federal construction. That bill died with the adjournment of the 85th Congress in 1958.

This was the motive of their assault just this year on the separate contract law in the State of New York. There is not so much hope for achieving a single contract system when SBA is attempting to have some of the work set aside for small contractors. Then, instead of one general contractor running the whole show or one "management contractor to coordinate all these things," SBA is on the job upsetting someone's applecart. When it is the AGC's applecart which is being upset, we can only reply, "Hooray for the SBA."

Senator PROXMIRE. Mr. Hendrickson, I want to tell you I am for this subcontracting program a thousand percent. It was my amendment that provided for it. I fought hard for it. We tried to get a tougher subcontracting program than we have now. We are going to continue to fight for it.

Mr. HENDRICKSON. Wonderful.

Senator PROXMIRE. We think the opportunity for small business definitely lies in this area. We think it is not only a matter of fairness to small business but also for the taxpayers—

Mr. HENDRICKSON. Wonderful.

Senator PROXMIRE (continuing). To be sure there is as much subcontracting as possible, because then you do get competition.

Mr. HENDRICKSON. That is correct.

Senator PROXMIRE. And you do not get the big firm insisting on holding all of the business to itself.

Mr. HENDRICKSON. Right.

Senator PROXMIRE. So I do think that there is a very strong agreement with your viewpoint among the members of the committee.

Mr. HENDRICKSON. I appreciate that.

Senator PROXMIRE. However, I think you understand the thrust of this bill is confined to the set-aside.

Mr. HENDRICKSON. I understand.

Senator PROXMIRE. While there may be a relationship, I think it is not quite as direct as maybe you imply in your statement.

Mr. HENDRICKSON. Well, I appreciate your views. I think that it is in the right direction.

In last year's Senate hearings, you, Mr. Chairman, inserted at pages 106-110 a position paper prepared by SBA containing allegations directed at the set-aside program and answers to those allegations. We find running throughout these pages and throughout other testimony by supporters of S. 1363 and S. 3096 of the 87th Congress a faithful record of what, from industry experience, we know to be the troubles and worries of AGC.

They do not like the fact that specialty contractors receive prime contracts. They do not like prohibitions against general contractors furnishing supplies and materials for their own subcontractors. They are anxious about possible requirements of having to subcontract more work.

In short, they worry about everything that limits the opportunity of the general contractor to pad his pockets. We fail to understand how enlightened public policy can be forged from this type of AGC anxiety.

It has been pointed out that once a set-aside contractor takes a contract he is free to contract up to 80 percent of the work without restriction as to the size of the contractor. For this reason, some work has been sublet to large construction firms.

If this is a defect, we believe it should be cured administratively, but we do not conclude that the entire set-aside program is, therefore, a failure, and we do not agree that the remedy is to abolish the entire set-aside program.

Senator PROXMIRE. Mr. Hendrickson, I want to say I am going to have to leave for the floor for at least a few minutes. A bill which is very important to me is coming up on the floor right now and I have to be there to offer an amendment to it.

Senator McIntyre will preside in my absence, and I will be back as soon as I can.

I want to thank Senator McIntyre for taking over the Chair.

Mr. HENDRICKSON. Thank you, Mr. Senator.

Senator MCINTYRE. Proceed.

Mr. HENDRICKSON. Thank you, Mr. Chairman.

The AGC contends that this practice of some set-aside contractors subletting much of their work results in too much subcontracting and in bid shopping. When the AGC complains about too much subcontracting, it is faithful at least to its own position in this question and to its own self-interest. But surely the ultimate in pious hypocrisy has been reached when the AGC, of all people, protests about bid shopping. One of the greatest headaches for our PHCC members is the extent of bid shopping engaged in by general contractors on Federal work.

From the 82d to the 84th Congresses inclusive, our association vainly sought the support and cooperation of the AGC to achieve a sound, effective anti-bid-shopping law covering Federal construction work. Thwarted at every turn by the AGC, we finally tried to secure passage of a bill merely requiring the naming of subcontractors, and when the AGC licked us on that one also, we finally gave up. We are happy to learn that the AGC opposes bid shopping.

When the AGC complains about that kind of bid shopping which allegedly results when a large general contractor takes a subcontract from a set-aside contractor, we are somewhat inclined to suspect that the wrong party is getting bid-shopped and that the wrong party is reaping the profits from the AGC point of view.

May I say here that sections 3 and 4 of S. 757, which were apparently added to the original Weaver-Metcalf version of the 87th Congress as a kind of palliative to the subcontractors, is no protection at all. The protection we want is the presence of the SBA in the Federal construction set-aside program.

Numerous instances of alleged higher construction costs have been introduced in previous testimony on this subject. These examples may possibly be accurate insofar as they relate to description of the actual bids submitted, but I feel that members of this subcommittee would be well advised to realize that these very "examples" could quite easily be of a most misleading nature.

For instance, it is a very simple matter when a Federal building construction project has been set aside under SBA's program, for vested interests, intent upon portraying the program in an unfavorable light, to have nonqualifying contractors submit ridiculously low bids, knowing full well that there is no danger such bids will be accepted. Believe me, gentlemen, the technique is an old one and coldly calculated to put a well-operating and highly beneficial Federal system in a bad light.

One of the most vicious assertions in this connection is that the small contractor is incompetent and that set-asides result in the Government receiving less than the requisite quality of products and services in contracts with small firms. This, of course, is not true, because all contractors, regardless of size, must comply fully with contract terms and conditions, including the Government's specifications.

All prospective contractors being considered for Federal contract awards—including the small business set-asides—must meet the minimum standards for responsible contractors as set forth in the Armed Services Procurement Regulations and the Federal Procurement Regulations.

Construction firms being considered under the Small Business Administration's set-aside program must have adequate financial resources or be able to obtain guarantee of such resources during the performance of the contract, be able to comply with the required delivery or performance schedule, have a satisfactory record of integrity, and, in general, be otherwise qualified and eligible to receive the award under applicable laws and regulations.

Now I should like to turn for a moment to the support of certain labor organizations for S. 757, and the very serious suspicions which the character of this support raises in our minds. Supposedly the reason for labor support for this bill is that the small contractor who benefits from the set-aside program is typically a nonunion contractor. This is a gross oversimplification.

I have said that the overwhelming majority of our 9,000 PHCC members fall within the SBA definition of a small construction firm. Approximately two-thirds of them employ union labor. The small construction firm, if typically anything, is typically a union contractor.

And what of the noticeable number of big business general contractors such as Daniel Construction Co. and Brown & Root, who are aggressively nonunion and antiunion?

Mr. Chairman, we know that last year the subcommittee chairman patiently asked of union representatives that they furnish documentation to spell out their claim that the SBA set-aside program had a significant antiunion effect in the construction industry. We wonder whether this subcommittee has by this time been furnished such documentation. We wonder whether there exists a list of set-aside jobs by location and contract amount designating the successful bidder and his union or nonunion status. Even if it were forthcoming, there are certain aspects of labor-management relations in the construction industry which Senators ought to bear constantly in mind.

In 1959, Congress passed the Landrum-Griffin Act, adding to the Taft-Hartley Act a new section 8(f), which legalized the pre-hire collective bargaining agreement in the construction industry. This means that a building trades union and a construction contractor can

enter into an agreement—and in the absence of a State right-to-work law, even a union shop agreement, before the contractor hires a single employee or bids his first job.

The first overture to establish relations can come from either the union or the contractor, and by corollary, the overture can be refused by the contractor or by the union, as the case may be. The union may seek to sign up the contractor and be refused because the contractor wants to operate with nonunion employees. The contractor may, for his own business reasons, wish to operate exclusively with unionized employees and may go to the union seeking a prehire agreement. If the union turns him down, his only choice is to operate nonunion or not at all.

When, therefore, a question is raised as to whether a set-aside contractor, or any other contractor, is nonunion by his own free choice, these questions ought to be asked:

Did the union make any effort to sign a pre-hire agreement with the contractor in question? Did the contractor apply to the union for a pre-hire agreement, and if so, what was the union response?

Unless these questions are fully answered, it is not possible to say whether the policies of a Federal agency such as the SBA tend to make life more difficult for unions in the construction industry.

S. 757 is supported by the Building and Construction Trades Department, AFL-CIO, a confederation of 18 international unions whose members work for the various classes of contractors in the construction industry. These 18 unions are frequently in direct competition with one another in all that relates to construction industry problems, as one knows who has had any experience with jurisdictional disputes between building trade crafts. The building and construction trades department operates under its own constitution and, according to its own established procedures, has every right to speak for itself.

In reading the record of the hearings last year on similar bills, and in following these current hearings, we cannot help but note with surprise that in addition to witnesses from the building trades department itself, only two affiliated international unions, the operating engineers and the laborers, have bothered to present witnesses or written communications to the committee concerning S. 757. We think that the subcommittee might well wonder: Where, oh where, are the other 16? Where, oh where, is that solid base of support which is always forthcoming from local unions and from rank-and-file members when labor, or any segment of labor, is really hurting and really feeling the need for a piece of legislation?

Mr. Chairman, from our labor relations experience in the construction industry, we can think of some very plausible reasons why, from among 18 building trades international unions, the operating engineers and laborers should be especially interested in a bill such as S. 757.

Members of these large, aggressive unions typically work for general contractors and not for specialty contractors such as members of PHCC. Their economic interests tend to parallel those of the general contractors in many areas of intraindustry dispute.

Among all general contractors, basic trade unions such as operating engineers and laborers would naturally tend to favor the larger, more affluent firms which are in a better position than their smaller

competitors to meet union demands for increased wages and fringe benefits.

I have pointed out that AGC is fearful that SBA influence on the construction site will mean more subcontracting and more prime contracts for specialty contractors. The operating engineers and laborers are their natural allies in this fear. When one general contractor is boss, he is free to subcontract as little as possible, and to assign as much work as possible to the lesser skilled and lower paid trades such as operating engineers and laborers. His only limits are the requirements of the work itself and the traditional lines of jurisdiction among the various building trade unions. So the general contractor's loss of work and the corresponding work loss of the operating engineers and laborers is the gain of the plumber, the pipefitter, the electrician, the painter, and so on.

Politics indeed makes strange bedfellows, but to us in the PHCC, it is not strange at all that in the effort to eliminate the SBA from the construction industry, and eventually to eliminate the small contractor and the specialty contractor, the operating engineers and the laborers should be occupying the same bed as the AGC.

Thus far, testimony both for and against S. 757 and similar bills in the last Congress has covered a wide range of industry issues and touched upon many aspects of Federal construction. The question of contract cost has been mentioned. The AGC desire for a single contract system or management contractor system has been mentioned. So has the AGC fear that the SBA would turn specialty contractors into prime contractors.

The ugly issue of bid shopping has been raised. The preservation of competition has been admitted by all to be desirable. It is not surprising that all of these issues should be raised in the hearings on S. 757 for they are various aspects of the central fact of construction life today—the effort of large general contracting firms and the AGC to monopolize the industry.

Against this total effort, the specialty contractors of PHCC feel that there is only one agency in the executive branch of the Government that they can look to with any hope for assistance and that agency is the Small Business Administration. We are indeed happy that the various contracting agencies have seen things our way in this particular battle and registered their opposition to S. 757.

While we appreciate their assistance, we recall to mind that in other battles in the same general war fought in the past, such as the anti-bid shop battle and the single contract policy battle, the contracting agencies have inclined strongly to the side of the AGC.

We wonder whether they would not have done so this time if it were not for the influence exercised within the administration by the able officials and staff members of the Small Business Administration.

These people understand the problem of the small business contractor like no other Government people in Washington. They understand the evil of bid shopping and they are deadly opposed to it. They understand the things a subcontractor has to put up with from a greedy general contractor on Federal work. They understand the monopolistic aims of the large general contractors and the danger therein for the small contractor.

It is small wonder that AGC hates the Small Business Administration and would like to see it eradicated, step by step, from all influence in Federal construction.

PHCC members, on the other hand, feel that they need the SBA and they need all of the services SBA presently provides to the small construction contractor.

We would like to submit for the record that, in our opinion, SBA has not yet exploited to the full its potential of even greater service to the specialty contractor, who is virtually always a small business contractor.

Mr. Chairman, I refer specifically to a system known in the construction industry as separate contracts for mechanical and electrical work. Federal agencies refer, in some instances, to this system of contract awards as "breaking out" the mechanical and electrical work from the general work. Not only in this system required on the State level in such States as Wisconsin, New York, New Jersey, Pennsylvania, North Carolina, Ohio, and Illinois, but it is practiced without a statutory requirement in numerous other States throughout the country.

We advocate, therefore, that SBA to a greater extent utilize its influence with the various contracting agencies to bring about more frequent use of the system which AGC fears and hates so much, the separate contract system.

If lower cost is the objective, experience has shown that costs are lower with separate contracts, as the profiteering, giant-sized middleman general contractor is denied the fat profit to take on work that he does not perform.

Opportunity for bid shopping is reduced as the number of prime contractors dealing directly with the Federal agency is increased in number.

Under present legislation, however, we see this trend to the cheaper, more efficient separate contract method as a practical impossibility without the more aggressive influence of the Small Business Administration.

Mr. Chairman, in the past it has been said that organized employer and labor groups in the construction industry are virtually unanimous in their opposition to the set-aside program. That alleged unanimity has now been shattered. We know the AGC and we understand well the roots of the fear and contempt which that organization entertains for all activities of the SBA.

We of the PHCC, on the other hand, fear the monopolistic tendencies of the AGC. For the protection of what is left of small business and vigorous competition in the construction industry, we urge, so far as possible, an expanded role for the Small Business Administration, and we urge a quiet burial for S. 757.

Senator McINTYRE. Thank you very much, Mr. Hendrickson, for what appeared to me to be a very forceful, hard-hitting statement.

Mr. HENDRICKSON. Mr. Chairman, if I may, could I introduce in the record a copy of the remarks of Congressman Shipley which were made in the Congressional Record on Thursday, May 2, 1963?

Senator McINTYRE. Without objection, it will be entered.

Mr. HENDRICKSON. Thank you.

May I also introduce in the record a speech that our president made last Monday before the annual convention of the Mechanical Contractors' Association of America in San Francisco, Calif.?

Senator McINTYRE. Without objection it will be entered.

Mr. HENDRICKSON. Thank you, Mr. Chairman.

May I also introduce in the record some statistics indicating that, where building construction projects are bid both ways, both on the single contract system and the separate contract system, the saving that accrues to the owning authority as a result of bidding mechanical and electrical work separately?

Senator McINTYRE. Without objection.

Mr. HENDRICKSON. Thank you, Mr. Chairman.

(The material referred to follows:)

[From the Congressional Record]

CONTRACTORS SUPPORT SMALL BUSINESS SET-ASIDE PROGRAM

Extension of remarks by Hon. George E. Shipley, of Illinois, in the House of Representatives, Thursday, May 2, 1963

Mr. SHIPLEY. Mr. Speaker, in their opposition to the small business set-aside program, the Associated General Contractors would like to have us believe they are speaking for the entire construction industry. It is refreshing, therefore, to learn that the National Association of Plumbing-Heating-Cooling Contractors is steadfastly opposed to the Associated General Contractors position and strongly in favor of the small business set-aside program. So that all Members may be aware of the National Association of Plumbing-Heating-Cooling Contractors position, I insert for the Record a column from its newsletter, the Pipeline, dated April 1963. The column is written by C. D. Brownell, of Champaign, Ill., president of the association. It is a cogent argument for the set-aside program, and a deserved rebuke to the Associated General Contractors.

(The column referred to is as follows:)

GENERAL CONTRACTORS GUNNING FOR SBA'S SET-ASIDES COVERING MAINTENANCE, REPAIR, AND CONSTRUCTION

The concerted effort in New York State and other areas to undermine or destroy long-established separate contract laws is not the only indication of a determined drive by the general contractors to pull the rug out from under the mechanical specialty contractors.

Another assault is currently underway by the generals on the Small Business Administration's set-aside program as it benefits small contractors in the construction field.

Specifically, the attack has been narrowed down to or focused on set-asides for maintenance, repair, or construction, and this strikes right at the heart of the interests of plumbing-heating-cooling contractors members.

Twin bills have been introduced in the present Congress—S. 757, by Senator Lee Metcalf, Democrat, of Montana, and H.R. 2029, by Representative William S. Moorhead, Republican, of Pennsylvania—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 bills have been referred to committee, which is where they should stay, as far as plumbing-heating-cooling contractors is concerned. Meantime, pending the customary hearings and the possibility they may eventually be reported favorable for floor action in the Senate and House, plumbing-heating-cooling contractors members should wire their vigorous objections to the bills to their two U.S. Senators and members of their State congressional delegation, as well as sponsors of the legislation in both Houses of Congress.

The Small Business Administration with its set-aside program is one of the staunchest friends of plumbing-heating-cooling contractors and mechanical contractors generally.

SBA operates a program under which Government construction contracts are set aside for competitive bidding by small contractors only.

When a Government procurement has been reserved for exclusive bidding by small firms only, it is said that it has been set aside for small business.

A set-aside is, then, a Government procurement reserved for exclusive competition of small business firms. It is a means of assuring small business an oppor-

tunity to compete with other small businesses for Government procurements.

Congress decided that in order to maintain and preserve the small business segment of the national economy it would be necessary that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small business firms.

To this end, the Small Business Administration has declared it to be policy that all Government agencies utilize all means properly available to set aside a portion of all Government procurements exclusively for small business participation, so as to assure small businesses the opportunity to bid on and receive their fair share of the total.

Official statistics reveal that last year publicly financed construction work, both Federal and State, amounted to approximately \$18 billion. Of this amount, only about half a billion was set aside for exclusive small business competition, leaving the remaining \$17½ billion for unrestricted large business competition.

There are no figures to show just how much of the half billion set aside for small business firms actually went to them in contract awards. However, in connection with the military construction program, it is known that 90 percent of the construction industry, representing small business firms, has been getting less than 50 percent of the business. Ten percent of the industry, representing the large construction firms, has been getting more than half. Five years ago, small construction firms were getting over 70 percent of the contract awards in the military construction program.

These statistics speak for themselves. The small business share of military construction is steadily declining and the small construction firms, or 90 percent of the industry, are rapidly being displaced from Government work by their big competitors.

It is the steadily increasing danger of being crowded out of the American construction market which set-asides by the SBA are designed to meet. Set-asides serve to deprive the powerful outsiders of the opportunity to outbid the small contractor on a local project which is within his performance capability.

It is asserted that SBA is creating inexperienced competition 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 is not in the banking business in competition with private lending institutions. Its loans are solely designed to meet legitimate needs of those eligible and credit-worthy small firms which are unable to obtain financial assistance from normal commercial channels.

Consequently, when an eligible and credit-worthy small business applicant is turned down by private lending institutions, SBA may step in and, provided there is reasonable assurance of repayment, render financial assistance.

It should be noted in this connection that so important are loans to the survival of small construction contractors that the United Association, AFL-CIO Journeymen, Plumbers, and Pipefitters Union, and other building construction trade unions very strongly support the principle of the SBA's making loans to these small contractors.

How large should a construction set-aside contract be? The SBA follows the criterion that a proper set-aside contract is one which a sufficient number of small firms can perform and are willing to compete for, assuring the Government of a price that would not be increased, by virtue of the set-side, over what could otherwise be expected.

If such a course were followed consistently without interference by the large construction firms, the very nature of the present-day Government construction projects would assure a fair share of contracts to both small and large firms in the industry.

Next month with Pipeline we will include forms for plumbing-heating-cooling contractor members to use in registering with the SBA as small construction contractors. The forms will be used by SBA in determining eligibility for contract awards.

In conclusion, the basic philosophy of SBA is to enable small construction contractors to participate equitably in the Government's construction business, without sacrifice of the primary objective of high quality at reasonable cost.

Experience proves that the small contractor's share of Government construction work would be inequitably reduced if authority to make small business set-asides were not available.

[Address delivered by PHCC President C. D. Brownell May 6, 1963, at annual convention of Mechanical Contractors' Association of America, San Francisco, Calif.]

President Munier, distinguished guests, and fellow contractors, I bring to you the sincere greetings and best wishes of the officers, directors, and entire membership of the National Association of Plumbing-Heating-Cooling Contractors for a highly successful convention and prosperous year ahead. Many of you men who sit before me today are acquaintances of long standing—not only colleagues in business and association activities, but also personal friends.

I could spend much time discussing the cooperative activities of MCAA and PHCC, but you know much of that already; I can assure you from the bottom of my heart, however, that I feel a genuine appreciation for the contributions your officers, your members and Leon Kromer have made to the well-being of our great plumbing-heating-cooling contracting industry.

With your consent, I am going to limit my remarks today to just one topic—a legislative matter which we of PHCC consider to be a key issue affecting our industry and under congressional consideration this year. I refer, gentlemen, to the Small Business Administration's construction set-aside program.

No less a person than President John F. Kennedy, in a letter last month to Defense Secretary McNamara, expressed a desire that the participation of small business firms in military procurement be increased to the greatest extent possible.

It is my opinion, frankly, that the Chief Executive of our Government does not speak out on major economic matters until and unless a critical point has been reached. There is, in his letter to Mr. McNamara, an obvious implication that the Kennedy administration realizes the necessity of providing Federal opportunities to the small construction contractors. President Kennedy is actually repeating and endorsing a basic policy previously set forth by Congress—namely the preservation of free, competitive, small business enterprise and assurance that a fair proportion of Federal supplies and services will be purchased from small business.

Small Business Administration's construction set-aside program accomplishes exactly those objectives, although on a somewhat limited scale thus far. Unfortunately, this construction set-aside program (which could very easily be your lifeblood or mine) is in danger of destruction by certain forces within the overall construction industry—forces which, incidentally, would like nothing better than to see the rising influence of mechanical contractors brought to an abrupt halt.

As you all know, the Small Business Act of 1958 provides that small business should receive a fair proportion of the total purchases and contracts or sub-contracts for property and services for the Government (including, but not limited to, contracts for maintenance, repair, and construction). And that, gentlemen, is where you and we come in—on these Federal contracts for maintenance, repair, and construction.

Before I go any further, I should possibly clarify one important point—namely a definition of "small business." The fundamental criteria involved in determining who qualifies as a small business on these construction set-asides is that the bidders have had a dollar volume of less than \$7.5 million on all work the previous year. When you get right down to cases, very few mechanical contractors throughout America exceed that volume annually. The overwhelming majority of plumbing-heating-cooling contractors, therefore, qualify under the SBA construction set-aside program.

Going back now to my main line of thought, SBA, Defense Department, and GSA (upon passage of this law) developed a nationwide program to give small contractors a better chance to bid Federal work through competitive bidding.

Under this program, SBA and the individual Federal agencies review planned building construction to determine (1) if small firms can handle the work and (2) if enough responsible small firms exist in the area of the project so as to assure the Government of a fair and reasonable price. If the answer is "No" to either question, the bids are thrown open to all—large and small. If the answer is "Yes" to both questions, the Federal building job can be set aside for the smaller contractors—who must still bid competitively against one another. It is only the few giants of the construction industry who are disqualified from bidding the job.

Even with this law in effect, SBA notes that only one-half billion dollars was set aside for small business competition during fiscal 1962. Let me repeat that figure for you—just one-half billion dollars. It sounds like a huge amount, yet the Federal Government either built or financed over \$17.6 billion during the same year. So, even with the limited SBA construction set-aside program

already operating, the overwhelming amount of work is still open to bidding by the few big firms.

Statistics show that the small business share of military construction in fiscal 1962 was 47.8 percent but that the rate for the first 6 months of this fiscal year has decreased to 38.4 percent. While the smaller contractors share has been decreasing, the propaganda and pressure brought against this program has increased. Available evidence points strongly to the possibility of complete elimination of small- and medium-sized mechanical contracting firms from Federal procurement—unless they happen to be favorites or captives of the large general contractors.

And, this will very likely happen unless we make our collective voices heard in the Halls of Congress. As a matter of fact, hearings on S. 757 (a bill introduced for the purpose of destroying the construction set-aside program) commence tomorrow morning before the Senate Banking and Currency Committee. The sole objective of the sinister forces sponsoring this bill is to deprive us of a direct market for our products and services.

The heaviest opposition to the construction set-aside program has come from the Associated General Contractors of America—who, I might add, have never been notorious as the mechanical contractor's friend. The general contractor organization has brought its heavy guns to bear on the entire construction set-aside concept and is actively working to destroy the existing program.

Their big pitch, incidentally, has been the economy and efficiency they would like to see in Federal construction. Such sentiments are, indeed, most pious; but the true fact is that it is a small group of approximately 65 large general contractors which has long dominated the Federal construction field.

Many of you are probably asking yourselves, and rightfully so, Why we are so concerned with this subject? What does it really mean to MCAA and PHCC? The answer is actually quite simple.

Any building construction project, as you all know, consists of two distinct and major parts—the shell of the structure and the mechanical-electrical components. Current Federal procedure, in most instances, is to use the single contract system of construction. This method fails to take into consideration the fact that the mechanical and electrical portions of the building frequently cost as much or more than the general work. The net result of the archaic single contract system in Federal construction is that mechanical contractors are almost always excluded by these large middleman general contractors from doing any business directly with the Government; costs to the taxpayer are greater, our profits are less, and the quality of work is generally not as high as it should or could be if separate mechanical contracts were used.

I know I don't have to talk about bid shopping, for every one of you in this room has experienced it—particularly on these large Federal jobs where every broker who can buy a desk and telephone comes in to bid the work. And, you know as well as I that this vicious bid-shopping practice is a cancer which drains the vitality and growth from the entire mechanical contracting industry.

Good business practices require that a mechanical contractor have a fair chance to compete in the industry and to realize a reasonable profit on his investment and efforts. Unless our contractors are assured that they will receive the contract if their bids to the successful middleman are low, we cannot possibly hope to become a completely healthy industry. The mechanical contractor—forced by outmoded Federal practice to bid through the large, profiteering middleman and compelled to take a considerably lowered price if his bid is shopped—must, under present conditions, often take the job in order to keep his force and equipment intact. Under such conditions, he is lucky just to break even.

At the very least, we businessmen have a right to expect the Federal Government to throw its weight on the side of ethical practices—not what has been done for so long by these large middleman contractors. And, it is here that the small business construction set-asides, which I discussed earlier, enter the picture. There is no valid reason why the Federal Government, under the set-aside program cannot handle a construction project by contracting out the mechanical and electrical work entirely separate from the general work.

I firmly believe that Federal construction contracting could and should be altered basically so that the agencies will award a general contract for the shell of the building and separate contracts directly for the mechanical and electrical work. Such a program—now possible under the set-side program—would benefit all of us, for it would cut out the bid shopping and also insure that we

receive our progress payments promptly. I could say much about the progress payment and retention problems, but I'll refrain except to state that I, for one, am sick and tired of financing these middleman general contractors.

Separate mechanical contracts, as a system of construction, lend themselves readily for award by the agencies under the construction set-aside program. Such a program is a logical next step under the current set-aside program and is entirely feasible; if curtailed now at the instigation of the Associated General Contractors, the results would be a distinct "feather in the cap" for those large general contractors who have been feathering their nests at our expense for so many years.

Believe me, gentlemen, without the current SBA construction set-asides, most of us in this room haven't got a ghost of a chance to get a fair opportunity at that big \$17½ billion Federal construction pie which is currently being divided, basically, among the members of that exclusive club of about 65 giant-sized general contractors.

In conclusion, I will reaffirm our association's position favoring the separate mechanical contract system of construction. We feel that currently-existing construction set-asides are a step in the direction of eventual Federal adoption of the separate contract system being used in so many States now (even without any statutory requirement in many cases). We advocate and support complete separation of bidding, direct contracts between the owner and mechanical-electrical contractors, and direct payment to the mechanical and electrical contractors. That's our aim—and we're not going to be deterred or deviate from it.

Thank you and my good wishes to all of you.

Statistical data on building construction projects bid under the old single-contract system and also the separate contract system—in each instance, bid the same date and on the same plans and specifications (the only difference being single versus separate)

Name and location of project	Date	Lowest bid on single general contract	Total low bids using separate contracts	Dollar saving when separate contracts used	Percent saving when separate contracts used
Sierra Branch, Conservation Center, Tuolumne County, Calif.....	Apr. 2, 1963	\$9,987,000	\$9,291,324	\$695,676	6.97
Corporation Yard, Arcata, Calif.....	Apr. 9, 1963	382,680	345,495	37,185	9.72
Office building, Modesto, Calif.....	do	264,300	256,795	7,505	2.84
Kent School Gymnasium, Kent School District No. 415, Washington	Dec. —, 1962	125,110	120,985	4,125	3.30
Congregational Church, Kirkland, Wash.	Jan. 30, 1963	174,059	165,459	8,600	4.94
Dormitory No. 7, University of Oregon, Eugene, Oreg.	July 19, 1961	1,461,135	1,363,587	97,548	6.68
USW Union hall, local No. 1557, Clairton, Pa.	May 14, 1960	309,000	275,300	33,700	10.91
Educ-psych buildings, Chico State College, Chico, Calif.	July 2, 1962	1,017,365	946,570	70,795	6.96
Mono-Inyo Conservation Facility, Bishop, Calif.	July 31, 1962	893,615	860,870	32,745	3.66
Reception center, California Institute for Women, Corona, Calif.	Sept. 5, 1962	1,103,000	1,044,812	58,188	5.28
Ada Municipal Hospital, Ada, Minn.	May 1, 1963	542,527	488,770	53,757	9.91
Winston County Courthouse, Louisville, Miss.	May 8, 1963	322,910	314,371	8,539	2.64
Total		16,582,701	15,474,338	1,108,363	
Average savings to owners where separate bids taken on mechanical and electrical work					7.1

Mr. HENDRICKSON. If I may, I have a booklet here on the economy and efficiency of separate mechanical contracts. Could I leave enough copies for the members of this committee to read, Mr. Chairman?

Senator McINTYRE. I will be happy to have one. I assume the others will too.

Mr. HENDRICKSON. Thank you very much, Mr. Chairman. I appreciate your wonderful courtesy.

Senator McINTYRE. Mr. Hottel.

Mr. HOTTEL. I have here a formal statement by Mr. Harvey W. Hottel, vice president of the Refrigeration & Air Conditioning Contractors Association of America to the U.S. Senate Committee on Banking and Currency, Subcommittee on Small Business, reference S. 757, 88th Congress, 1st session.

Mr. Chairman, I am Harvey W. Hottel, vice president of the Refrigeration & Air Conditioning Contractors Association of America. I represent a large group of construction industry contractors throughout the United States—businessmen who, in many instances, do a considerable portion of their business directly with the Federal Government and who are very directly affected by the legislation proposed under S. 757. My testimony this morning is also based, to a large extent, upon my personal experience in dealing with various Federal agencies and contracting officers.

I would like to express the deep appreciation of the Refrigeration & Air Conditioning Contractors Association of America for this opportunity to appear before this subcommittee to express our views on S. 757. As an individual businessman, I warmly commend this subcommittee for the liberal opportunity it grants businessmen to be heard during consideration of legislation which has such a widespread impact upon the construction industry.

I realize that it is totally unnecessary for me to review in detail the history of the Small Business Administration and the legislation which created it. However, I do feel that any comments I present should be predicated upon a momentary recall of the congressional policies declared in the Small Business Act of 1953, as amended.

The U.S. Congress, after considerable study and investigation into the broad economic policies of the Federal Government as they relate to small business, declared in 1953 that the Federal 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 for maintenance, repair, and construction) be placed with small business enterprises * * *.

Numerous, widespread programs have been instituted by Small Business Administration on a nationwide basis as a result of the Small Business Act—one of the major programs being the construction set-aside program which is the subject of these hearings.

My experience in dealing with various Federal agencies has always been that the Small Business Administration invariably goes out of its way to do exactly what the congressional statement of policy indicates was intended to be done—"to aid, counsel, assist, and protect."

I could spend the entire day telling this subcommittee of instance after instance where the Small Business Administration has helped not only my firm, but countless other companies which fall within the statutory definition of a small business. I would like, with your consent, to give you just several concrete illustrations of how the construction set-aside and other Small Business Administration programs

have been a specific benefit to my firm. The examples I relate are, I assure you, completely typical of what I know is being done throughout the country by SBA.

On a recent set-aside project involving the U.S. Navy, my firm was instrumental in designing and developing a particular type of trailer van used by pilots engaged in high altitude flights. Considerable time, effort, and expense went into the development and construction of these vans—and they proved to be a complete success. After a short period of experimental operation, the Navy Department determined that it wanted to order 51 additional vans and, after establishing very precise and detailed technical specifications, put the job up for open bidding under the construction set-aside program.

Although I was not the lowest bidder on that rather substantial order, it was soon established by Navy contracting authorities that the two bidders whose price was less than mine were disqualified for various reasons from entering into a contract. Subsequent to this disqualification of the other two bidders, my firm (then being the low bidder) was notified by Navy Department that our firm was not considered capable of handling this work.

Navy based its decision on a preliminary, sketchy spot check that a Navy "team" had made of my firm's activities. The information I received from Navy did not advise whether my quality control was considered deficient, my facilities were considered deficient, or what the real cause might be.

I was, to say the least, quite disappointed because it was my firm which had developed these specialized vans; in addition, I knew that my firm was capable of handling the project at a cost to the taxpayer which was less than that of existing competition.

I had just about given up hope on this matter when SBA stepped into the picture. SBA sent a team of investigators—a team which gave my firm a far more thorough "going over" than I would ordinarily have considered to be possible. Actually, SBA sent in two teams. The first team investigated my physical facilities, ascertained that I had concrete commitments for even more plant space if needed for the project, investigated the technical competence and experience of my key people, and required a thorough analysis of all Federal and private work my firm had done in recent years.

After the first SBA team completed its investigation, the SBA finance team entered the picture. These men gave my business structure an examination which would have done credit to Dun & Bradstreet or Internal Revenue Service. Inasmuch as the Navy project on which my firm had bid involved a need for rather extensive credit, this team insisted that I verify the precise extent of my line of credit with the local banks. SBA's team was so thorough that a mere oral commitment for credit, readily granted by the banks, was not enough; SBA's men insisted that the commitment from the banks be in writing.

Upon completion of this investigation—and I assure you it was the most thorough I have seen in all my years of experience—SBA then went to Navy procurement with a certificate of competency and demonstrated conclusively that my firm was capable of handling this work.

This particular project, set aside under SBA's program, was one which I obtained, quite frankly, as a result of SBA activities—their

effort to "aid, counsel, assist, and protect, insofar as is possible, the interest of small business concerns. What SBA did in my case was certainly no different from what I know they are doing in countless other situations throughout the country.

The proponents of S. 757 have in many instances indicated their feeling that the Federal Government does not obtain top-quality work from smaller contractors.

Again, I could spend quite a bit of time telling you of situations where it is the giant prime contractors—firms whose organizations are so vast that it is often physically impossible for one division to know what is being done by another division—who cannot possibly put the time and effort into quality control that the smaller contractor can give the Government. Also, regardless of the comparative size of a contractor receiving a construction set-aside award, he must meet the same technical and performance standards imposed upon even the giants. The small businessman receives no preferential treatment when it comes to meeting the standards imposed.

The Government construction market is certainly a huge one, and it is highly competitive. Previous testimony on the subject of construction set-asides has indicated that a relatively small group of giant-sized contractors has until recently dominated the entire Federal construction business. Again, from personal experience, let me assure you that the "giants" will stop at nothing to squeeze the smaller contractors out of direct Federal contracts in construction.

For instance, I recently submitted a bid on a highly specialized mechanical project in Huntsville, Ala. There were six bidders on this particular Federal project and it was one which involved some highly complex technological procedures. Much to the astonishment of the bidders on this job, one of the Nation's large aircraft manufacturers also submitted a bid—one which was approximately one-half the average amount of the other bids.

Mr. Chairman, bidding on these complex technical projects is a highly competitive business, and we contractors generally know, within a reasonable degree, the production costs of our competitors. Submission of this giant manufacturer's bid astounded all who saw it because we knew beyond a shadow of a doubt that the equipment being bid upon could not possibly be produced (much less a profit earned) at the figure being submitted by the aircraft manufacturer.

Later, during informal discussion, I heard a representative of that manufacturer aver that he realized his firm would take that particular project at a loss but that his employer was willing to do so primarily because he wanted to "break into this field."

That company's engineering department was so vast that it could easily afford to transfer a few engineers from other of its Government projects being done on a cost-plus basis to this smaller job and let them work on it.

To make a long story short, the aircraft manufacturer got the job, but I am advised that their actual date of delivery of the end product was considerably beyond that called for in the specifications.

My point, Mr. Chairman, is this: The "giants" of industry have such overwhelming, vast, unparalleled resources at their command that they can easily absorb major losses in order to squeeze out the small contractors. These "giant" contractors have had a cozy arrangement for

some time whereby they absorb the overwhelming amount of all Federal work.

In a \$17.5 billion market, they are unwilling to see even one-half billion dollars set aside for competitive bidding by small contractors. They want the "whole hog" for themselves.

I acknowledge, Mr. Chairman, that I searched my conscience very carefully while preparing this statement re S. 757 and the SBA construction set-aside program. What really concerns me is that powerful, vested contractor interests would dare to come before Congress and try to destroy a program which has visibly benefited thousands of small businessmen and their employees through the small business construction set-asides.

If these giant-sized contractors are successful in destroying this portion of Small Business Administration's operations, what will be their next target? Big business realizes that it alone does not elect Senators and Congressmen—it is the hundreds of thousands and millions of little people who elect those officials. Big industry's tactics, therefore, are not going to be a "grand slam" against an entire Federal program, but rather a constant nibbling away at the fringes of the total concept.

Such tactics, unless firmly opposed by the small businessman and brought to an abrupt halt, will have the net result of destroying a concept which is fundamental in America. Your subcommittee and the entire Congress are being asked, in effect, to return to an era of almost total control by a few construction giants.

Much has been made by proponents of S. 757 that the construction industry is a "different" or "unique" industry which requires special consideration and unusual treatment. These proponents, knowing full well that they must always be on record as favoring motherhood and being against sin, affirm their so-called support of small business concepts but claim that the construction industry is a "special situation." I defy these proponents to demonstrate how construction differs measurably from any other major industry.

Construction set-asides are still being bid competitively. They can be established only if the Federal agency involved is assured of adequate competition and are no different in basic operation from the set-asides for manufacturers. Those who aver that construction is anything different from any other industry are, in my opinion, deliberately confusing and distorting the real issue—namely, whether small contractors will be afforded any Federal protection in today's competitive market.

If there has been any abuse of this SBA construction set-aside program, let its opponents show specifically how it has been abused. I firmly content that the program has been a godsend to small construction contractors and one of the very few instrumentalities by which small businessmen have been enabled to protect themselves against the depredations of industry monsters who have as their aim the complete destruction or captivity of small business.

Mr. Chairman, I urge that this subcommittee consider carefully the disastrous effect that enactment of S. 757 would have upon the small business community. SBA has literally been our protector in many instances—and we contractors want the record to show that we realize how much help we have received under the construction set-aside program currently being operated by Small Business Administration.

Thank you.

Senator McINTYRE. Thank you, Mr. Hottel, for a very good statement, one based on your own personal experiences which I think will be helpful to the committee.

I wish there were more time for questions. Some occur. But in the interest of closing the hearing today, thank you very much.

Thank you, Mr. Hendrickson.

Our next witness is Senator Karl Mundt who wishes to introduce a witness. It is very nice to see you, Senator. I know you are interested in TFX and I know you have many other obligations.

**STATEMENT OF HON. KARL E. MUNDT, U.S. SENATOR FROM THE
STATE OF SOUTH DAKOTA**

Senator MUNDT. You are most gracious. I wanted to come down here and introduce an oldtime friend of mine, one of the outstanding businessmen of South Dakota. He typifies sound business as we have it in our State and as we like to see it develop and grow through the United States generally. As a matter of fact, his organization was founded out in Kadoka, S. Dak. in 1925. Kadoka is a community of—

Mr. ADELSTEIN. About 200, Senator.

Senator MUNDT. I might have to run for office out there. I will say 500 [laughter]. But it is not a very large city.

From that little organization in 1925 he has developed the Northwestern Engineering Co., with his father and his associates. He is now vice president of it. They moved to Rapid City, the second largest city in our State. Also he has been appointed by the Governor of South Dakota to serve on what we call the Industrial Development Expansion Agency.

I think all States have something of that kind, a strictly bipartisan group trying to bring new businesses and new activities to our area.

We have had a lot of experience in dealing with small business in contracting, and I know you will be interested in what he has to say. I commend him to you with all sincerity and thank you for your courtesy. Mr. Stanford Adelstein.

Senator McINTYRE. Thank you very much, Senator. We will be delighted to hear from him.

**STATEMENT OF STANFORD ADELSTEIN, VICE PRESIDENT, NORTH-
WESTERN ENGINEERING CO., RAPID CITY, S. DAK.**

Mr. ADELSTEIN. Thank you, Mr. Chairman. I have no prepared statement but I do have a few remarks. I will try to make them as brief as possible and to the point and as specific as possible.

Senator McINTYRE. Go right ahead. We are glad to hear what you have to say.

Mr. ADELSTEIN. As the Senator indicated, I am vice president of Northwestern Engineering Co. The Northwestern Engineering Co. was considered a small business so far as number of full-time employees and dominance in its field, until such time as the rather artificial rule of \$5 million volume was established and then \$7.5 million volume. We do not know where it will be.

I would like to address myself to some specific arguments frankly in favor of S. 757.

The first point I would like to make is the increased cost to the taxpayers. I would like to make that point with a specific example. Northwestern Engineering Co., after being ruled to be large business, purchased approximately 49 percent of the stock in a firm known as the South Dakota Improvement Co., a firm admittedly headed by a former Northwestern Engineering Co. employee.

South Dakota Improvement Co. was low bidder and successfully awarded and successfully completed two projects. For the record they were project No. 740-676, stabilized movement of gym No. 532, at Rushmore Air Force Station, Rapid City, S. Dak., and contract No. (39-601) 616587, repair railroad crossing on Highways No. 14 and 16, at Ellsworth Air Force Base, Rapid City, S. Dak. The award of this first project was made on the 14th of June 1961.

The South Dakota Improvement Co. on the 28th of June 1961 was low bidder on another project, at Sioux Ordnance Depot. The amount of the bid of South Dakota Improvement Co. was \$82,360.75.

However, at that time, due to a protest, South Dakota Improvement Co. was then ruled to be no longer small business, largely due to Northwestern Engineering Co. holding 49 percent of the stock, and the contract was then awarded to the second bidder for an amount of \$89,886.50, or a difference of approximately, or exactly, \$7,525.75, or a difference of very nearly 10 percent.

I think this illustrates very clearly the fallacy in the argument that any bids that were thrown out because of lack of small business status were "phony bids." This was a very realistic bid.

South Dakota Improvement Co. had been small business, had been awarded a job only 14 days before the date on which they were thrown out of bidding on Government work. I think this is a fine specific example.

I would like to also discuss two recent advertisements for projects by the U.S. Army Corps of Engineers out of the Omaha district that illustrate the fact that this program, the set-aside program, is unreasonable and unrealistic.

These two projects are as follows:

The first one is invitation CIVENG-25-066-63-97. Essentially this is a project for the reconstruction of a highway near Pierre, S. Dak. in connection with Oahe Reservoir. This project, in the approximate amount of \$700,000, according to the Corps of Engineers' publication, and is set aside for small business.

This is a very large project, as I think \$700,000 would indicate. This project is one for which our company is particularly well qualified, having done much similar work in that area. Yet we are denied the right to even bid competitively for this work.

And it might also be interesting to note—and I will leave the list of equipment because I do not want to try to read it here—that in order for us to bid this project we must have available to our firm approximately \$1,469,000 worth of equipment. And I have the specific list.

(The list follows:)

Equipment required for Corps of Engineers project covered by invitation No. CIVENG-25-066-63-97

Number	Equipment	Cost
1	Asphalt plant complete with tanks.....	\$170,000
1	Asphalt paver.....	25,000
1	Broom, power.....	3,500
1	Backhoe, ½-yd.....	25,000
1	Crushing plant.....	140,000
1	Compressor, 210 cu. yds.....	12,000
1	36-in. conveyor with pugmill.....	12,000
1	Drill, truck mounted.....	10,000
1	Distributor, oil, truck mounted.....	14,000
1	Generator, 150-cu. yd.....	13,000
1	Heater, hot oil.....	7,500
1	Heater, retort.....	7,500
1	Heater, tank car.....	7,500
1	Loader, 1½ cu. yds.....	29,000
4	Motor graders, at \$27,000.....	108,000
3	4-in. water pumps, at \$900.....	3,600
1	50-ton roller.....	4,000
4	Self-propelled rollers, rubber-tired, at \$8,500.....	34,000
1	Vibrating rollers.....	13,000
2	10-12-ton steel roller, at \$10,000.....	20,000
1	12-yd scraper.....	12,000
1	Screening plant.....	36,000
1	Self-propelled spreader.....	20,000
2	Jersey spreaders, at \$6,000.....	12,000
2	45-ton scales, at \$5,500.....	11,000
1	Shop, truck.....	6,000
8	D-8 tractors with dozers, at \$40,000.....	320,000
1	Tractor, farm.....	4,000
1	Trailer, office.....	6,000
1	Trailer, parts.....	6,000
1	Truck, boom.....	10,000
20	Trucks, dump, at \$12,000.....	240,000
2	Trucks, mechanic, at \$8,000.....	16,000
2	Trucks, service, at \$11,000.....	22,000
6	Trucks, ½-ton pickup, at \$2,400.....	14,400
6	Truck, water, at \$12,000.....	72,000
3	Tampers, air, at \$350.....	1,050
2	Welders, portable, at \$1,000.....	2,000
	Total.....	1,469,050
	Deduct the following, if aggregate materials purchased from commercial producers:	
1	Crushing plant.....	140,000
4	D-8 tractors, at \$40,000.....	160,000
2	Trucks, ½-ton pickups, at \$2,400.....	4,800
	Total.....	304,800

Mr. ADELSTEIN. Is this really small business? Is it the desire of the Congress to protect firms that can invest \$1,469,000 in new equipment from firms such as ours that happen to have \$4 or \$5 or \$6 million worth of new equipment purchased? It just does not seem logical.

The next project is a project for railroad relocation, once again a very involved project. I will give you the invitation number. It is CIVENG-25-066-63-96. It is on the Big Bend Reservoir.

This is once again a large project set aside for small business for which our firm is particularly well qualified. As a matter of fact, our firm will probably, through becoming subcontractor, provide a good bit of the materials for this project because we have one of the quarries in the area that is particularly well suited to make these materials.

There has been a great deal of discussion about whether a sub goes to small business and the whole situation. I think maybe a specific example of our firm's practice taken from our 1962 calendar year would be helpful.

During our 1962 calendar year Northwestern Engineering Co. completed \$12,418,525 worth of work. Of that, 21.2 percent was subcontracted, or some \$2,631,000. Of that which was subcontracted, 95.6 percent went to small business concerns as defined by the law.

Our company I think is very typical of those in our area.

We sub work to firms that are well qualified but who do not have the staff or organization to handle a sizable project.

In fact, there is even an interesting point in that small 4.4 percent that went to a big business by "definition" that we subcontracted. This firm was the only firm in the area qualified to subcontract work on an emergency installation for the housing of personnel in connection with the rapid growth of the Minuteman program. Other than that, small business gets almost all of our subcontract work, and we are typical.

I might also mention in passing, as the Senator indicated, our firm began with \$7,500 worth of borrowed capital in 1925 and has grown to be what the SBA calls large business without any assistance from any set-aside program—and in a rural area.

I would like to make my next point in connection with the alleged remarks that any support of S. 757 by members of the AGC is due to the pressure of large business firms.

I am a past president of the AGC of South Dakota, Highway-Heavy Chapter. Our chapter voted by definite secret ballot—because at the time I was president I was afraid of any prejudice—and our chapter voted in favor of the Metcalf bill in the last session. Ninety-five percent of our members are what are considered small business.

What concerns them, Senator, is the fact that this disturbs the basic equilibrium in our industry. These firms who happen to be smaller than probably 3 of our members out of 65 that are large business—these firms that are smaller—have been getting their share of the work but they are afraid of the artificially stimulated entry of other firms into the construction industry that disturbs the basic free competitive operating of the industry.

I could also mention a letter here which I will leave, a letter written by Mr. Whitton, which you may have.

Senator McINTYRE. Would you want that letter introduced in the record?

Mr. ADELSTEIN. I think so.

Mr. Whitton is discussing the effectiveness of the subbing practice and of the entry of small business into the highway program. I think it is applicable here. I will leave that. There is on point in belaboring it by reading it.

Senator McINTYRE. Without objection it will be in the record.

Mr. ADELSTEIN. Thank you.

(The letter referred to follows:)

U.S. DEPARTMENT OF COMMERCE,
BUREAU OF PUBLIC ROADS,
Washington, D.C., February 28, 1962.

Mr. IRVING MANESS,
Deputy Administrator, Small Business Administration,
Washington, D.C.

DEAR MR. MANESS: Reference is made to your inquiries in regard to small business as related to the Federal-aid highway program.

We have recently completed a survey to determine what proportion of the Federal-aid highway construction program is being performed by small business

contractors. The enclosed report describes the method used in canvassing the various contractors and tabulates the results obtained.

This survey includes that in the fiscal year 1961 the small business contractors received 82 percent of the number of contracts and 54 percent of the dollar value of the contracts awarded by the various State highway departments under the Federal-aid highway program.

It is significant to note that even in the interstate program, where the work was of such a nature as to encourage larger sized contracts, small business organizations were successful in obtaining nearly twice the number of contracts as did big business with a nearly even split of the program dollar value. In the Federal-aid primary and secondary programs the proportion of awards to small business is much larger. Even when the overall contracts have been awarded to big business concerns, there has been considerable opportunity for small business contractors to participate on a subcontracting basis.

From these data it is clear that Federal-aid highway construction programs as developed through the various State highway departments are geared to conform to the expressed intent of section 116(d) of the Federal-aid Highway Act of 1956, and of title 23, United State Code, section 304. It is also obvious that nothing could be gained by introducing the small business set-aside principles into the Federal-aid highway construction program inasmuch as the same objectives have been and are being accomplished without the additional costs, delays, and paperwork that would necessarily be involved if the set-aside procedure were adopted.

Sincerely yours,

REX M. WHITTON,
Federal Highway Administrator.

Mr. ADELSTEIN. I would also like to quote from a letter from the late Senator Francis Case to me. This letter I would rather keep. He was a very dear friend and quite a loss.

I will just quote from a portion of it which has to do with the letter I had written in connection with this bill.

As you know, not only have the Associated General Contractors of South Dakota, but literally hundreds of working people have written to us opposing the construction set-aside program.

My own views are the direct result of at least two rather unhappy experiences that occurred in the Rapid City area with which you are no doubt familiar. Not only in this program not working but it imposes hardships on everyone, including the small businesses that eventually do qualify, as well as the large businesses that are excluded from its coverage.

The Senator, as you know, was a very studious person, and before he would ever take this position he examined it rather carefully.

It has been suggested that there probably is no relationship between the loans made by the Small Business Administration and the set-aside program. One of the unhappy experiences to which the Senator alludes is the experience of a group of firms under rather common ownership that entered into the contracting business, were unsuccessful to the tune of about \$1,200,000 worth of work, which was taken over by bonding companies. This firm proceeded to make a loan from the Small Business Administration—of course with bank support—in the amount of \$600,000.

Then one of the affiliated firms purchased a hot mixed asphaltic concrete plant. They are placing hot mixed asphaltic concrete on Ellsworth Air Force Base in Rapid City, S. Dak.

This plant, which is financed by the Federal Government, is there in direct competition to two established permanent plants, one owned by our company, one owned by an affiliate of the Peter Kiewit Sons' Co., both of whom are denied the opportunity of bidding at Ellsworth Air Force Base due to the set-aside program.

The ridiculousness and the illogical interference with the free competitive system are best illustrated by that.

I would also like to leave here—and I will just enter it into the record because there is no point in my keeping it—a letter from the contracting officer at Ellsworth Air Force Base refusing to give our company proposals to bid on a project that eventually went to one of the firms who was supported by this loan. He was the sole bidder, in the amount of \$46,165, on a job for which our firm was logically and entirely qualified to bid but denied because of the set-aside.

I am sure I am not doing as well as I could, Senator. I hope you will pardon me. Due to aircraft connections I was up all night. But I am trying to do this quickly.

Senator McINTYRE. You are doing fine.

Mr. ADELSTEIN. There is a great deal of difficulty in trying to administer the laws that presently exist. I referred presently to the South Dakota Improvement Co. I have a transcript of a conversation between the president of the South Dakota Improvement Co., a small business firm in which Northwestern owns 49 percent—

Senator McINTYRE. Be sure to indicate to the Chair here what it is you desire to have entered in the record. Did you just mention a letter that I did not happen to note.

Mr. ADELSTEIN. Perhaps I did; yes.

Senator McINTYRE. You referred to a letter. If you will identify anything else you might want to put in the record, then we will get it in.

Mr. ADELSTEIN. I would like to enter in the record a letter refusing to allow our firm to receive an invitation to bid on a project at Ellsworth Air Force Base.

Senator McINTYRE. Will you identify the letter a little more than that?

Mr. ADELSTEIN. This project is IFB 39-601-63-36, which was subsequently awarded to the John A. Carlson Construction Co. in the amount of \$46,165, Mr. Carlson being the sole bidder.

Senator McINTYRE. Without objection it is so ordered.

(The letter referred to follows:)

HEADQUARTERS, 821ST STRATEGIC AEROSPACE DIVISION,
U.S. AIR FORCE,
Ellsworth Air Force Base, S. Dak., March 25, 1963.

Reply to attention of: BPR.

Subject IFB 39-601-63-36, maintain roads, basewide.

To: Northwestern Engineering Co., Post Office Box 1392, Rapid City, S. Dak.:

Reference your letter dated March 9, 1963, requesting subject invitation for bids. This is to advise that this invitation is a small business set-aside, therefore, we are unable to send you a copy.

D. S. GALBRAITH, *Contracting Officer.*

Senator McINTYRE. Do you have some other material?

Mr. ADELSTEIN. I would like to enter into the record a list of equipment required for Corps of Engineers project covered by invitation CIVENG-25-066-63-97, a project for surfacing constructed service roads at the dam in the vicinity near Pierre, S. Dak. (Oahu Reservoir).

Senator McINTYRE. Without objection, so ordered.

(The list referred to appears on p. 180.)

Mr. ADELSTEIN. This program, as I suggested, is unwieldly and difficult to administer fairly.

I would like to discuss briefly a portion of the transcript dealing with the refusal to allow South Dakota Improvement Co. to remain small business, in the case of the project I have previously referred to at the Sioux Ordnance Depot where South Dakota Improvement Co. was low bidder and then was taken out because of small business and was awarded to the second bidder.

Basically, this showed that the ruling that South Dakota Improvement Co. was not small business was made before receipt of Form 355, which is allegedly the form by which determinations are made. And Mr. Hake stated that they had to award the job to the second bidder in order to keep funds which had previously been committed.

The question was asked what percentage of stock ownership Northwestern Engineering Co. could have a firm which would still be held to be small business, and the question was not answered. There is no answer to it today.

The entire thing is difficult to define—what is small business and what is not small business—and basically unfair. I am running over my 10 minutes, and I hope you will pardon me.

There have been a number of statements by the administrators of this program. These statements tend to discredit the AGC, of which my company is a member, and tend to discredit all who operate in support of S. 757.

I personally would like to say that I think that it is very unfair for administrators or governmental employees, if I may, who are paid by the taxpayers, to make such statements as the following:

“Spokesmen”—referring to those who support S. 757—“are seeking to maintain a firm grip on Government construction contracts for a ‘select few.’”

Statements that, “It is true that sometimes a large construction firm which knows it is not eligible to bid on the set-aside contract, and knowing that its bid will be rejected, submits a phony bid.”

These are both from a letter by Mr. John E. Horne, Administrator of the Small Business Administration, to the Wall Street Journal, which appeared on Friday, July 20, 1962.

And such further remarks as: “The measure brought a roar of protest from large contractors who, as the record shows, had managed to obtain a big chunk of the Government market and wanted to hold on to it.”

Another remark such as:

They—

referring to those who support this bill—

immediately went to work on a plan to junk the set-aside program. Since they belong to the AGC, Inc., they used their membership in this association to further their cause. After all, didn't they dictate AGC policy and control AGC conventions? Then why not use this power to speak for the entire association?

Another remark:

They submit below-cost bids fully aware they are not eligible to take the jobs, that they will be turned down. Then they subtract the difference between their ineligible bid and the bid that was accepted from the small firm and publicize the difference, insisting the taxpayer is paying this difference.

Another statement from the second source: “Why should large contractors enjoy special privileges?”

All of these quotations are from a speech made by Mr. Irving Maness, Deputy Administrator of the Small Business Administration, before the National Association of Professional Contract Administrators' symposium on Government contracts administration in Los Angeles, Calif., on April 13, 1962.

I vastly resent the inferences by a governmental employee that those of us who are in this industry and who are working to try and build the United States and do construction and do it well are in some sort of a collusive, unfair, unreasonable effort in order to support this bill.

I think that the very fact that administrators are seeking so hard to keep this artificial support program in existence indicates that there must be something basically wrong with it.

Of course, perhaps I am too conservative in that regard, but I do think that is a remark I should make.

Generally, Senator, that covers what I want to say. I tried to do it quickly. It is probably not as well organized as it should have been.

Senator McINTYRE. Thank you very much, Mr. Adelstein, for helpful testimony on this matter. We appreciate your being here.

(Mr. Adelstein later supplied the following data for the record.)

Summary of completed projects for the year 1962

Job No.	Location and description	Amount	For whom performed
4859	Evanston, Wyo.: Subbase and plant mix----	\$1,229,732	Wyoming Highway Department.
4460	Veterans Hospital, Ft. Meade: Site improvements.	32,339	Veterans' Administration.
5760	Buffalo-Gillette, Wyo.: Structures-----	335,765	Wyoming Highway Department.
5890	Stapleton Field, Colo.: Site preparation for runway.	2,167,490	City and County of Denver
1561	Rock Springs-Rawlins, Wyo.: Grading and surfacing.	872,146	Wyoming Highway Department.
2561	Lewistown-Roy, Mont.: Grading and surfacing.	710,297	Montana Highway Commission.
2761	Four Corners, Colo.: Grading-----	702,288	Colorado Department of Highways.
2861	Twogotee Pass, Wyo.: Bituminous stabilized base.	314,316	Wyoming Highway Department.
3061	Denver, Colo.: Grading and asphalt paving--	37,136	City and County of Denver.
3261	Northern Heights, Rapid City: Site grading and streets.	52,586	United Corp.
3661	Craig, Colo.: Grading, stabilizing, and plant mix.	253,553	Colorado Department of Highways.
3861	Rapid City, S. Dak.: Street improvement No. 123.	12,163	City of Rapid City.
4161	Mount Rushmore Road, S. Dak.: Grading and surfacing.	121,157	South Dakota Department of Highways.
4561	Union Center, S. Dak.: Mobile trailer park--	261,259	The Boeing Co., Seattle.
4661	Rapid City, S. Dak.: Watermain-----	29,050	City of Rapid City.
4861	Belle Fourche, S. Dak.: Site preparation, mobile housing.	354,543	The Boeing Co., Seattle.
162	Rock Production and Sales Co. Quarry, Rapid City.	522,253	
262	Denver, Colo.: Mineral aggregate supply----	319,599	City and county of Denver.
362	Rapid City, S. Dak.: Private work projects .	369,788	Various property owners.
462	Plainview-Foster, Nebr.: Grading and sand oil base.	314,514	Nebraska Department of Roads.
562	Black Hills National Cemetery: Asphalt surfacing.	9,500	M. A. Garland Construction, prime contractor.
862	Rapid City, S. Dak.: Family mobile park, phase II.	209,245	The Boeing Co., Seattle.
962	East Colfax and Peoria East: Seal coating and chips.	58,043	Colorado Department of Highways.
1162	Rapid City, S. Dak.: Asphalt surface, shopping center.	61,046	The Stahr Co., Minneapolis, prime contractor.
1262	Pueblo, Colo.: Curb and gutter-----	2,096	City of Pueblo.
1362	Benson-Steins Pass Highway, Colo.: Base course and asphalt surface.	324,625	The Ashton Co., prime contractor.

Summary of completed projects for the year 1962—Continued

Job No.	Location and description	Amount	For whom performed
1462	Meade County, S. Dak.: Bituminous resaling.	37,715	South Dakota Department of Highways.
1562	Colorado Springs, Colo.: Mesa waterline.....	52,059	City of Colorado Springs.
1662	Rapid City, S. Dak.: Asphalt surface, new cathedral.	24,086	Brezina Construction Co., prime contractor.
1762	Peterson Field, Colo.: Resurfacing runway..	121,653	City of Colorado Springs.
1962	Rapid City, S. Dak.: Street improvements..	76,813	City of Rapid City.
2062	Dayton-Kane Road, Wyo.: Grading and bituminous stabilization base.	297,993	Bureau of Public Roads.
2262	VA center, Hot Springs, S. Dak.: Repair roads.	37,903	Veterans' Administration.
2362	Boulder Canyon Road, S. Dak.: Road repair.	30,678	South Dakota Department of Highways.
2462	Minuteman access roads: Gravel surfacing..	116,651	Do.
2762	Belle Fourche and Wall, S. Dak.: Mobile trailer parks.	360,835	The Boeing Co., Seattle.
2862	Mount Rushmore, S. Dak.: Excavation for reservoir.	27,708	Minneapolis Tank & Manufacturing Co., prime contractor.
2962	Hudson-Hoyt, Colo.: Grading, stabilization structure and surfacing.	226,101	Colorado Department of Highways.
3262	Minot and Max, N. Dak.: Mobile trailer parks.	194,737	The Boeing Co., Seattle.
3462	Ellsworth AFB, S. Dak.: Asphalt surfacing..	21,200	Technical Construction Co., prime contractor.
3662	Haakon County, S. Dak.: River bank protection.	26,408	South Dakota Department of Highways.
3862	Rapid City, S. Dak.: Site improvement, storage terminal.	55,653	Wycoc Pipe Line Co.
	Total.....	11,384,722	

Summary of uncompleted projects as of Dec. 31, 1962

Job No.	Location and description	Contract amount	Percent complete	For whom performed
4261	Grand Canyon, Ariz.: Grading and surfacing.	\$984,295	99	Bureau of Public Roads.
4361	King's Hill, Mont.: Plant mix.....	644,089	88	Montana Highway Commission.
4461	Kesk Housing, Ellsworth AFB: Street surfacing.	116,000	49	Kesk, Inc., prime contractor.
4761	Fall River Co.: Grading and surfacing.....	959,384	97	South Dakota Department of Highways.
662	Cheyenne, Wyo.: Concrete paving.....	695,626	92	Prime contractor.
762	Box Elder, S. Dak.: Concrete paving.....	2,236,479	31	South Dakota Department of Highways.
1062	Visitors' Center, Mt. Rushmore: Site preparation and utilities.	46,203	89	Prime contractor.
2162	Capehart Housing, Ellsworth AFB: Streets and utilities.	400,701	63	Department of the Air Force.
2562	Newcastle-Lusk: Grading, gravel and hot mix surfacing.	677,914	43	Wyoming Highway Department.
3062	Billings-Lavina: Grading and surfacing....	1,333,453	15	Montana Highway Commission.
3162	Englewood, Colo.: Dam.....	1,172,200	27	City of Englewood.
3362	Kiowa, Colo.: Plant mix.....	289,221	99	Colorado Department of Highways.
3562	Douglas School, Ellsworth AFB: Asphalt surfacing, streets and parking.	26,463	68	Department of the Air Force.
3762	Colorado Springs, Colo.: Watermain.....	767,659	22	City of Colorado Springs.
3962	Blue River Dam, Colorado Springs.....	1,170,000	0	Do.
4062	Buffalo-Gillette: Subgrade, plant mix and miscellaneous.	1,949,813	0	Wyoming Highway Department.
4162	Meade County: Concrete paving.....	845,114	0	South Dakota Department of Highways.
4262	St. Martin's Academy, Rapid City: Asphalt surfacing.	19,755	62	Benedictine Sisters.
4362	Strasburg, Colo.: Concrete paving.....	1,134,084	0	Schmidt Construction Co., prime contractor.

NORTHWESTERN ENGINEERING Co.

Balance sheet, Dec. 31, 1962 (taken from 1962 audit report)

ASSETS	
Current assets:	
Cash on hand and in banks	\$1,005,661
Deposits refundable in 1963	825
Accounts receivable	2,029,992
Notes receivable	125,564
Accrued interest receivable	13,772
Certificates of special assessment	14,118
Prepaid expenses	49,883
Contracts in process	118,318
Total current assets	3,358,133
Property and equipment:	
Cost	8,009,659
Less accumulated depreciation	5,732,176
Total property and equipment, net	2,277,483
Other assets	457,504
Total assets	6,093,120
LIABILITIES, CAPITAL STOCK, AND SURPLUS	
Current liabilities:	
Accounts payable	1,615,962
Notes payable	154,335
Accrued liabilities	244,321
Advance payments on construction contracts	206,694
Total current liabilities	2,221,312
Long-term indebtedness	224,265
Total liabilities	2,445,577
Capital stock and surplus:	
Common stock	1,110,000
Common stock, class B	1,111,600
Total common stock	2,221,600
Less treasury stock	7,320
Total common stock, net	2,214,280
Paid-in surplus	76,629
Earned surplus	1,856,634
Total surplus	1,433,263
Total capital and surplus	3,647,543
Total liabilities, capital and surplus	6,093,120

Details of balance sheet items at Dec. 31, 1962

Current assets:

Cash on hand, Denver, Colo.....	\$30
Cash in banks:	
American National Bank, Rapid City, S. Dak.....	368,477
Colorado National Bank, Denver, Colo.....	243,681
First National Bank, Rapid City, S. Dak.....	304,432
Belvidere State Bank, Belvidere, S. Dak.....	15,959
Rushmore State Bank, Rapid City, S. Dak.....	10,284
Continental Illinois National Bank, Chicago, Ill.....	49,996
Revolving fund accounts.....	12,802
Total cash in banks.....	1,005,661
Deposits refundable in 1963.....	825
Accounts receivable:	
Estimates receivable, completed contracts.....	457,431
Estimates receivable, incomplete contracts.....	517,481
Retained percentage, completed contracts.....	484,540
Retained percentage, incomplete contracts.....	377,164
Other sales and service accounts.....	264,719
Due from employees.....	220
Total accounts receivable.....	2,101,555
Less estimated uncollectable accounts.....	71,563
Total accounts receivable, net.....	2,029,992
Notes receivable:	
Affiliated companies.....	93,928
Officers and employees.....	9,000
Others.....	22,636
Total notes receivable.....	125,564
Accrued interest receivable.....	13,772
Certificates of special assessment: Interest-bearing, issued by the city of Rapid City, for work performed.....	14,118
Prepaid expenses:	
Interest.....	1,000
Insurance (unexpired portion).....	13,586
Advances on construction contracts.....	35,297
Total prepaid expenses.....	49,883
Contracts in process ¹	118,318
Total current assets.....	3,358,133

	Cost	Reserve for depreciation	Book value	
Property and equipment:				
Land.....	\$269,292		\$269,292	
Buildings.....	138,054	\$83,642	54,412	
Railroad spur.....	26,628	23,243	3,385	
Machinery and equipment.....	7,498,741	5,594,345	1,904,396	
Office equipment.....	76,944	30,946	45,998	
Total property and equipment.....	8,009,659	5,732,176		2,277,483

Other assets:

Stock, Bank Realty Co.....	10,000
Stock, Black Hills Biltmore Corp.....	1,000
Stock, Rapid City Industries, Inc.....	500
Stock, Wyoming Improvement Co.....	30,470
Stock, South Dakota Improvement Co.....	24,500
Bonds, city of Rapid City, S. Dak.....	10,000
Bonds, Valley Investment Corp.....	3,000
Notes receivable, due after Dec. 31, 1963.....	234,061
Cash surrender value of life insurance.....	85,703
Investment in joint venture.....	13,669
Deposit on land purchase.....	5,000
Debentures, Auto Bankers of South Dakota.....	38,750
Other deposits.....	851
Total other assets.....	457,504
Total assets.....	6,093,120

¹ Contracts in process is computed by applying the estimated percentage of completion to the anticipated gross income on incomplete contracts, as estimated by management.

Liabilities, capital, and surplus

Current liabilities:

Accounts payable:

Subcontractors	\$472,396
Materials, supplies, and other purchases	1,143,566
Total accounts payable	1,615,962

Notes payable:

Equipment purchase contracts	93,955
Affiliated companies	47,000
Mortgage payment due in current year	13,380
Total notes payable	154,335

Accrued liabilities:

Federal and State income taxes (1962)	100,084
Payroll taxes	65,631
Property taxes	37,197
Salaries and bonuses	39,200
Interest payable	1,114
Sales and use tax payable	1,095
Total accrued liabilities	244,321

Advance payments on construction contracts

206,694

Total current liabilities 2,221,312

Long-term indebtedness:

Equipment purchase contracts	114,578
Mortgages payable, 4% and 5 percent, secured by real estate, due in monthly installments	62,896
Life insurance loans	38,643
Deferred income tax	8,148
Total long-term indebtedness	224,265

Total liabilities 2,445,577

Capital stock and surplus:

Capital stock:

Common, voting and participating, \$100 par value	1,110,000
Common, class B, participating, \$100 par value	1,111,600
Total common stock	2,221,600
Less treasury stock	7,320
Total common stock, net	2,214,280

Surplus:

Paid in	76,629
Retained earnings	1,356,634

Total surplus 1,433,263

Total capital and surplus 3,647,543

Total liabilities, capital, and surplus 6,093,120

Senator McINTYRE. Our next witness is Mr. Fred Kaplan, MSI Corp.

Mr. Kaplan, I would appreciate it, in the interest of time, if you could—and I note your statement is not too long—summarize where you can so that we can try to move this along and get it all cleaned up today.

We appreciate seeing you and having you here.

**STATEMENT OF FRED L. KAPLAN, VICE PRESIDENT, MSI CORP.,
WHEATON, MD.**

Mr. KAPLAN. Actually my statement is really a summary more or less. I have not gone into any specific details at all.

Senator McINTYRE. You handle it any way you want to. I am just bringing to your attention the fact time is short.

Mr. KAPLAN. My name is Fred L. Kaplan. As vice president of MSI Corp., a construction company based in Wheaton, Md., I wish to offer testimony in behalf of retaining small business set-asides in the construction industry and clarification of certain side issues which may be of some assistance to the committee in preparing its determination.

As of June 30 of this year, our company will lose its qualification as small business due to the growth in volume we have accomplished since 1961. In view of this, I consider that our expression of favor for small business set-asides will be unique in that there are few big business testimonials of a similar nature.

In our own experience we have successfully bid and completed many projects under the set-aside program, yet never did we contemplate the program as a vital adjunct to the successful and continuing growth of the company, nor do we expect to suffer in the future from inability to bid on set-aside work.

Our conception of the true value of SBA and the set-aside program has been an identification with the economic and philosophical approach that increased small business participation is essential in Government procurement and that the relatively small increase in costs which may result from such a program yields multiple benefits in the form of restricting monopoly growth and concentration of economic power.

There has been a continuous refrain throughout previous testimony in this hearing and in years gone by that the construction industry by its individualistic nature is antimonopolistic in character and thus self-policing competitively.

Many, in fact most, statistical analyses reveal that the opposite is true. I will point directly to the missile base operation which demonstrates through the Engineering News Record tabulation of costs that of 35 contractors involved in the total work 7 controlled over 52 percent, and 25 percent was managed by only 2 contractors. This is an astonishing concentration of volume and responsibility for an industry which is reportedly immune to monopoly trend.

Certain practices now in vogue with governmental and private procurement officials add greater impetus to concentration and monopoly than would the abolishment of set-asides. I list these below and not necessarily in the order of their relative importance.

1. Job consolidation to eliminate small bidders.
2. Prequalification procedures conducted in "kangaroo court" conditions under the guise of defense expediency.
3. Recent high incidence of the breakdown of competitive bidding.
4. Cost-plus-fixed-fee practices by agents other than Government.
5. Joint-venture tendency where unjustified by job size.
6. Antibrokerage provisions which tend to raise costs and limit bidders.
7. Bid depository recognition and other price-raising devices.

8. Blacklisting without hearing or appeal.

I will be glad to insert in the record at a later date, if requested, a fuller explanation and examples of any of the above-mentioned competition-limiting practices and devices.

The defense of small business is vital to a healthy, competitive business sector that is compatible with the best public interest. Continuation of set-asides is one bulwark in the maintenance of industrial balance of power and they should be continued.

Thank you.

Senator McINTYRE. Thank you very much, Mr. Kaplan.

If the committee should happen to feel that they would like to get a breakdown on those practices, we will have the staff get in touch with you. Thank you.

(Mr. Kaplan's complete prepared statement follows:)

STATEMENT OF FRED L. KAPLAN, VICE PRESIDENT, MSI CORP.

Mr. Chairman, my name is Fred L. Kaplan. As vice president of MSI Corp., a construction company based in Wheaton, Md., I wish to offer testimony in behalf of retaining small business set-asides in the construction industry and clarification of certain side issues which may be of some assistance to the committee in preparing its determination.

On June 30 of this year, our company will lose its qualification as small business due to the growth in volume we have accomplished since 1961. In view of this, I consider that our expression of favor for small business set-asides will be unique in that there are few big business testimonials of a similar nature.

In spite of the many zealous positions taken pro or con the SBA program, and objective review of Government procurement during the life of the set-aside period reveals that in and by itself the SBA program is neither villain nor hero except from partisan viewpoint.

In our own experience, we have successfully bid and completed many projects under the set-aside program, yet never did we contemplate the program as a vital adjunct to the successful and continuing growth of the company, nor do we expect to suffer in the future from inability to bid on set-aside work.

Our conception of the true value of SBA and the set-aside program has been an identification with the economic and philosophical approach that increased small business participation is essential in Government procurement and that the relatively small increase in costs which may result from such a program yields multiple benefits in the form of restricting monopoly growth and concentration of economic power.

There has been a continuous refrain throughout previous testimony that the construction industry by its individualistic nature is antimonopolistic in character and thus self-policing competitively.

Most statistical analyses reveal that the opposite is true, ENR's report of new business in fiscal year 1961 shows the largest rate of increase in Federal work occurring in the \$1 million or more capacity per year. The Defense Department's figures for 1961 demonstrate a drop of 16 percent in small business construction awards. Even among the giants of the industry monopoly trend is evident. ENR's tabulation of missile base costs lists 35 contractors involved. Of this group, seven controlled over 52 percent of the work and 25 percent was managed by only two contractors. This is an astonishing concentration of volume and responsibility for any industry which is reportedly immune to monopoly trend.

Certain practices now in vogue with governmental and private procurement officials add greater impetus to concentration and monopoly than would the abolishment of set-asides. These are listed below, but not necessarily in the order of their relative importance.

1. Job consolidation to eliminate small bidders.
2. Prequalification procedures conducted in kangaroo court conditions under the guise of defense expediency.
3. Recent high incidence of the breakdown of competitive bidding.
4. CPFF practices by agents other than Government.
5. Joint-venture tendency where unjustified by job size.
6. Antibrokerage provisions which tend to raise costs and limit bidders.
7. Bid depository recognition and other price-raising devices.

8. Black listing without hearing or appeal.

To save time, I will insert in the record at a later date, if requested, a fuller explanation and examples of any of the above competition-limiting practices and devices.

The current tendency among contracting officials to equate size with virtue and ability is a symptom of monopoly growth. While it is manifest that certain efficiencies are developed by larger organizations, it is not a concomitant rule that the beneficial result from this efficiency accrues to the general public. Conditions in the automotive and aircraft industry indicate that small, independent businessmen who deal with the "big boys" do so on the purchaser's terms only and this lesson should be a warning to subcontractors in the construction industry as to what their future may hold.

The defense of small business is vital to a healthy competitive business sector that is compatible with the best public interest. Continuation of set-asides is one bulwark in the maintenance of industrial balance of power and they should be continued.

Senator McINTYRE. The next witness is Mr. David T. Eisen of Eisen-Magers Construction Co. Good afternoon.

**STATEMENT OF DAVID T. EISEN, SECRETARY-TREASURER,
EISEN-MAGERS CONSTRUCTION CO.**

Mr. EISEN. Senator McIntyre, I would like to introduce as my testimony that testimony which I presented last September before the House Committee on Banking and Currency of the 87th Congress on the similar bill up at that time, H.R. 10518.

Senator McINTYRE. Without objection, it will be done.

Mr. EISEN. Thank you, Senator.

(The testimony referred to follows:)

**STATEMENT OF DAVID T. EISEN, SECRETARY-TREASURER OF THE EISEN-MAGERS
CONSTRUCTION CO., BLADENSBURG, MD.**

Mr. EISEN. If you please, Congressman Patman, I would like to briefly give a history of our organization—

Mr. PATMAN. You may proceed, sir, with anything that is germane to this legislation.

Mr. EISEN. Thank you, sir.

I would like to make one correction. You indicated I was the president of Eisen-Magers Construction Co. I am, in fact, the secretary-treasurer of that firm.

The Eisen-Magers Construction Co. was formed by myself and my partner, William F. Magers, in August of 1945 when I completed my service in the Army during the war. We had both worked together for a construction company here in the city for a period of about 5 years prior to my service.

I was manager of a construction company and he was a superintendent of construction.

When I got out of the service in July of 1945 we planned, and with very little funds started, our firm, the Eisen-Magers Construction Co.

With the small funds that we had, mine was primarily—what was it called—the sum we received upon discharge?

Mr. PATMAN. Terminal pay?

Mr. EISEN. That is correct, my terminal pay was my bankroll.

Mr. PATMAN. That was in the Second World War. In the First World War they got \$60.

Mr. EISEN. I think mine was \$400, sir. This was the beginning of our company. We have just celebrated our 17th anniversary together, and we have come, according to my belief, a fine way.

Mr. PATMAN. We are all proud of the benefits given to World War II veterans. I think it was a wonderful thing.

Arrangements for this were made right in the middle of the war, I believe, in 1944, when we didn't know for sure whether we would be successful or not, but we were arranging to take care of the World War II veterans for two reasons: One was that we wanted to be sure they were treated properly and provided for by

a grateful Government. The other reason for this was to prevent any long unemployment in this country as we had after World War I. We were told we would have 10 million unemployed.

It was for these reasons we wanted to be just as generous as possible so as to induce our servicemen to go into business and to go to school, to buy homes, and I think it was a wonderful thing.

I hope you took full advantage of it, sir.

Mr. EISEN. Congressman, I, as a recipient of this generosity by our Government, through the efforts of the terminal pay, am certainly in a congratulatory mood toward Congress for this benefit because it enabled me personally to go into business as a small contractor and to grow. That is one of the reasons I am appearing before you today, sir. I feel that the termination of the act as it now stands, to protect people like myself, to protect small business, would be a fallacy on the part of the Government, or Congress, and that you would be defeating the purpose for which the Small Business Act was originally legislated.

To continue my history—as small contractors with limited funds we started our work in the very, very important field at that time of remodeling, mostly retail commercial institutions.

If you recall, sir, during the war, through the necessity of the war effort, there was a great backlog of work which needed to be performed and could not be performed because the primary materials were more important in the war effort than they were in the remodeling of retail stores, and this was our first effort in the construction field.

We did that and grew to the point where in 1950 we were able to get into the type of work in which I am mostly interested, and that is public work.

We perform construction contracts in the commercial, industrial, and public fields. We build schools, we build churches, we build other institutional buildings, as well as shopping centers, industrial factory buildings, warehouses, and related government work. We have performed contracts for the various Government agencies—Army, Navy, Air Force, Interior, and others.

We feel that the act, as it stands now, was created to protect small businesses like ours. We feel that the elimination of the small business set-aside program in the construction industry would be a great hardship on small business firms like my own.

I would like to point out, sir, that we are faced in the construction industry with great competition from all sides—big business, large construction firms, and an open-shop construction field which has grown up in this area to a point where we, as primarily union contractors, members of the Associated General Contractors, found it impossible to procure public work. Where a few years ago it was necessary, in order to survive in the industry, for us to form another corporation working in the open-shop field to compete with the open-shop contractors that were getting the work in this field.

We are what is known as a dual organization. Our primary business is Eisen-Magers Construction Co., Inc., a union firm, a member of the Master Builders, and in turn a member of the Associated General Contractors of America.

We were in a position 2 years ago where we bid some 60 jobs in an 18-month period without once being successful low bidders, primarily losing job after job to open-shop competition.

It was then found necessary for self-preservation to go into the same field, the open-shop field, and we formed Permanent Builders Co.

Mr. HARVEY. Was this open-shop competition larger or smaller companies than yourself which you talk about?

Mr. EISEN. In size usually equal, sir. We have since been able, on an equal footing, to get an equal amount of Government work. We do not use this firm to any great degree in private work.

We recently built an office building in Silver Springs. That job was performed under Eisen-Magers Construction Co., a union firm. However, with the Federal contracts which we now have, four in fact, we are working at Fort Belvoir and at Andrews Air Force Base, these contracts were taken under the name of Permanent Builders Co., and we had to bid on these projects under the name of Permanent Builders Co., our open-shop firm, in order to meet the open-shop competition which is existing in the field today.

Mr. PATMAN. Why would you get any advantage by organizing another company, the so-called open-shop company, when you have to pay prevailing wage rates. Why would you profit by the open-shop arrangement when you have to pay the prevailing wage rates?

Mr. EISEN. There is a difference, sir, and I think I can point out each difference.

Mr. PATMAN. Suppose you do that.

Mr. EISEN. It is true that both the union contractor and the open-shop contractor must, in fact, pay the Davis-Bacon rates which are specified in the specifications for each Government contract. However, as a union contractor it is necessary, No. 1, to pay the welfare fund and fringe benefits on every hour of labor which is not made part of Davis-Bacon, or has not until now, which is not part of any Federal specification or part of any Federal contract.

Mr. PATMAN. Is that a sizable sum?

Mr. EISEN. I would say, sir, that that alone, the welfare funds retirement funds, and other fringe benefits which must be paid by union contractors amount to approximately 3 percent of all labor expended on the project.

You can understand, sir, that the various rates vary in the various fields. In some we pay 7½ cents an hour for welfare funds, 5 cents an hour for retirement fund. In others the rates may vary up to 15 cents per hour in either of the two funds. However, these are expenses with which the union contractor is confronted and the open-shop contractor is not. This is but one of the differences whereby an open-shop general contractor has an advantage over a union contractor.

Secondly, under union conditions, when it comes to overtime, overtime is double time.

Mr. PATMAN. Could you give us the rates per hour?

Mr. EISEN. Per hour?

Mr. PATMAN. Yes.

Mr. EISEN. The laborers, for instance, I think we pay 7½ cents for the welfare fund and 5 cents per hour for the retirement fund.

For the carpenters it is 9 cents an hour welfare and I believe it is again 5 cents for the retirement.

The other trades I am not sufficiently conversant to give you the amounts, and if you wish I can get for you the fringe benefits of every classification of labor—

Mr. PATMAN. Would you break that down in the record when you get your transcript?

Mr. EISEN. I shall be very happy to submit it to you, sir.

Mr. PATMAN. Put a comparison in there.

Mr. EISEN. Yes, sir, so that you can see the difference between the union fringe benefits as opposed to no fringe benefits in the open-shop field.

(The information requested above is as follows:)

EISEN-MAGERS CONSTRUCTION Co., INC.,
Bladensburg, Md., September 18, 1962.

Re addendum to testimony of David T. Eisen.

HON. WRIGHT PATMAN,

Chairman, Subcommittee No. 2, House of Representatives, Committee on Banking and Currency, Washington, D.C.

DEAR CONGRESSMAN PATMAN: Pursuant to your questions about fringe benefits payable by union contractors on Government construction contracts, during my testimony before your committee, I have compiled a typical list of benefits, now in force in this area, which the open-shop contractor is not faced with.

Fringe benefits

	Welfare	Pension	Apprentice- ship
Bricklayers.....	\$0.09	\$0.10	
Carpenters.....	.09	1.15	\$0.12
Cement finishers.....	.10		
Electricians.....	1.10	.10	.10
Laborers.....	.09	.085	
Lathers.....	.15	.15	2.025
Operating engineers.....	.125	.08	.05
Plasterers.....	.15	.15	2.05
Plumbers and pipefitters.....	.175	1.10	1.02
Reinforced iron workers.....	.10	.10	.003

¹ Withheld: Money withheld from employee's wages.

² All employees: Journeymen and apprentices.

My feeling is that if these currently paid benefits by union contractors would be made part of the prevailing wage scale through the implementation and revision of the Davis-Bacon Act, there would be a more uniform code of wage determination between open-shop and union contractors in computing and estimating the value of any specific project.

In evaluating the above information, I must amend my testimony on page 137 wherein I stated that the above costs approximated a 3-percent cost to the union contractor and raises it to 5 $\frac{1}{3}$ percent, which it actually is. This still does not take into consideration the great difference on overtime charges and other so-called featherbedding practices with which the union contractor is confronted and not the open-shop contractor.

I trust that this will assist you in the evaluation of the question at hand.

Yours very truly,

DAVID T. EISEN.

Mr. PATMAN. The amount just on welfare and retirement payments amounts to 10 to 30 cents an hour this would be approximately 80 cents to \$2.40 a day.

Mr. EISEN. That is correct.

Mr. PATMAN. Go right ahead. I didn't intend to interrupt.

Mr. EISEN. That is perfectly all right.

Under union contracts, when it comes to overtime, work on Saturday or Sunday, which is necessary on occasion, at union rates the overtime is double time. Under Federal legislation and the enforceable statutes the overtime is at time and a half. That is a great difference.

Mr. PATMAN. If I understand you correctly, you failed in about 60 bids before you changed over to an open-shop company?

Mr. EISEN. That is right, sir.

Mr. PATMAN. You don't object to paying all these benefits if your competitors paid them, too?

Mr. EISEN. Absolutely.

Mr. PATMAN. You are perfectly willing—

Mr. EISEN. I can assure you, sir, that I am basically a union contractor. I went into the open-shop field with great reluctance.

At the moment I belong to an organization here, the Construction Contractors Council, which is an organization of union general contractors and union subcontractors, which is primarily engaged in negotiations with labor.

I am on the committee, and one of the promulgators of a resolution which is trying to make it imperative that work go union. My sentiments are strictly union.

The fact that I am in the open-shop field, as I mentioned, was an expediency toward self-preservation. I was forced into this in order to compete with a segment of business which was taking job after job. This I did with great reluctance, and the sooner the field is organized to a point where I again can work as a union general contractor, I shall be most happy, sir.

To continue: I have read some testimony from labor unions which in itself I believe is a wrong approach. Certain union representatives have said that the small business set-aside is throwing the work into a field where it is opening it up to open-shop competition, that if you would not have the small business set-aside it would be simpler for the union contractors to get this work. I believe that is a fallacy, sir.

I, as a union general contractor, now have to compete with the open-shop general contractor who has an easier avenue to procure work because of the differences that I pointed out between union competition and nonunion competition, but if you would eliminate the small business set-aside, I, as a union general contractor, would not only have the competition of the small nonunion general contractor but the competition from the large general contractors as well who on many occasions are in a position to take the type of work that we ordinarily do, and this is work which may range from \$50,000 up to \$1 million contract.

A large, even union, general contractor, finding himself in a position between jobs or in a position where he would like to bid a specific job which is now categorically a small business set-aside job, could many, many times bid and be the successful bidder on this type of work even though he does not anticipate making a penny profit from it because his major work is the larger contracts.

He can walk into our field, the field of small business, take work for nothing, and in that manner prevent us from getting this work which is now our livelihood.

The avenue of business which we are presently enjoying comes from a segment of Federal work primarily in set-aside contracts which, if left open, we would have very, very little chance of getting, because there are so many large contractors, especially here in this locality now, who have come in to take the larger Government work, or at least attempt to, many of them are here from all over the country, that it could, in my judgment, practically eliminate the field of small general contractors in which I find myself.

These large contractors could very easily, because their major business is the larger construction contracts, at will take contract after contract of the type which we are now getting under the small business set-aside program.

I can assure you, sir, that there is no lack of competition in our field, even under the small business set-aside program. Job after job that I bid can have as many as 15 to 20 general contract bidders, and if you wish, sir, I can certainly submit this information to you. I know that at the moment we are the general contractors on a sewage treatment plant at Fort Belvoir where there were 12 general contractors bidding this job in which I was the successful bidder at \$604,413. Twelve general contract bidders were involved, my bid being \$150,000 below the Government estimate. I am now completing this project.

The bids ran from \$604,000 up to \$1 million. My low bid, which was \$22,000 lower than the second bid, was actually \$150,000 below the Government estimate, which is indication that it cannot be cited that you are stifling competition by the maintenance of this act.

Mr. PATMAN. Do you have any identical bidding in your business?

Mr. EISEN. Sir?

Mr. PATMAN. Do you have identical bids?

Mr. EISEN. This would be as remote a possibility—it is of the remotest possibility in the construction industry.

Mr. PATMAN. In some lines of business it is down to the fourth decimal point.

Mr. EISEN. I realize. We are in the same business. We buy steel, cement, and other materials where the finger of scorn has been placed.

Mr. PATMAN. Do you often get identical bids?

Mr. EISEN. Never in this field.

Mr. PATMAN. Do you ever get them, speaking now of steel, cement, and other items?

Mr. EISEN. On occasion. I can point out that the occasion is in the two items which I mentioned, and that only when the bids come directly from big business, not small business.

In the defense of small business, we do procure bids from the general field of construction endeavor, and even in the field of steel, where the prevalence of identical bids has been made public; when I deal with the types of firms with whom I normally do business, which are the small steel contractors, there an identical bid is as remotely possible as in the general contract field, because when different firms work with variable labor, materials, fabrication, overhead costs, delivery costs, et cetera, it is practically impossible for the bids to come in as identical bids.

You know, sir, I am surprised that more people like myself, small contractors, have not risen in defense of the act as it now stands. I really am. I am surprised at this, because from all the information I have thus far received the construction industry would be happier if this set-aside program were eliminated.

Mr. PATMAN. That is the object of the hearings. Most of the witnesses are for the set-aside program generally, as adopted by the Small Business Administration, but most of them want to make an exception of the construction industry.

Mr. EISEN. I cannot see how the construction industry differs one iota from any other industry in the country. This is an industry where competition is the very essence of our business.

You asked a very good question when you asked, Is there ever an identical bid?

I have been in this industry for over 25 years and I never recall an identical bid in that time.

I have seen bids as low as \$5 apart but I have never seen an identical bid in 25 years.

Mr. PATMAN. That is outstanding evidence of real competition.

Mr. EISEN. Definitely, sir. That is why I cannot understand why a segment of the industry should say that this industry differs from other industries in the country, and the small business set-aside, although it may be good for the

procurement of other materials by the Government, should not be a criteria in the construction field. I believe it is more important in the construction field than in any other field because this is a field where competition is basic.

I so rarely get a project without having to bid competitively that in looking back over my history of work, which now in 17 years comprise 172 projects, I do not believe I have been the recipient of 5 contracts without competitive bid—17 years of work, 172 contracts, and I don't believe I have gotten 5 contracts without competitive bid, and those probably from my own family.

Mr. PATMAN. You have gotten about 10 contracts a year, then, over the 17-year period?

Mr. EISEN. If you want to figure it that way.

Mr. PATMAN. Every third year you got one without competition.

Mr. EISEN. That is probably correct, and that probably from my own brother. Competition is the root of the construction industry, and I can't see how this industry can be singled out as one where small business would benefit, or even the industry would benefit, by the elimination of the small business set-aside.

Conversely, I think that the elimination of the small business set-aside program would be extremely detrimental to 90 percent of the construction industry because I believe that 90 percent of the construction industry is small business—but 10 percent of the construction industry controls the voice of our industry.

Mr. PATMAN. There is one practice which bothers me as it now stands and that is one which permits a broker from a State far removed from the place where the work is to be done to show up when the bidding takes place; not having anything at all, he is not in the contracting business, he doesn't even have an office, he has nobody working for him, yet he bids for these projects which sometimes run into the millions of dollars. The only reason, I assume, that he is successful is that he is able to give a performance bond, and then that gives him a license to find a concern which will pay him the most to take the contract over. If this practice occurs I believe it is not wholesome or good.

I wonder if you would like to comment on that?

Mr. EISEN. I agree with you, sir. We as general contractors are definitely not brokers.

Mr. PATMAN. I refer about only the type I mentioned. I am not referring to any others. I am talking about the fellow who is not a genuine contractor at all, but a pseudocontractor.

Mr. EISEN. Frankly, sir, I have heard this does occur. However, it is outside the realm of our work or the work in which we are engaged, and we rarely run into such competition in the type of work that we are primarily interested in.

Mr. PATMAN. Of course, the agency could take care of that. I understand the Defense Department does make requirement about being in business, and so forth.

Mr. EISEN. Yes, sir, in each of my contracts is written a percentage of work that we must ourselves perform.

Mr. PATMAN. That would eliminate—

Mr. EISEN. Thirty-five, forty percent, and maybe forty-five percent where we must engage labor and perform this work ourselves. We must submit payrolls to attest to those percentages, percentage requirements.

Mr. PATMAN. Since it was done in those instances it could be done by all the others.

Mr. EISEN. Certainly, and that would eliminate the type of brokerage to which you are referring, sir.

Mr. PATMAN. Did you have any other points you wanted to make?

Mr. Harvey has some questions.

Mr. HARVEY. Mr. Eisen, as I gather from your testimony here, and I am sorry I had to step out a moment, I come away with these two conclusions:

First of all, you say the Eisen-Magers Construction Co., which is a union shop, would without question suffer if this legislation were passed, that is H.R. 10518, which would amend the small business set-aside program?

Mr. EISEN. That is right.

Mr. HARVEY. The union shop company would suffer if that is passed. Is that your conclusion?

Mr. EISEN. Of course, sir. As I explained, my reason for going into the open shop field was one of self-preservation. We just could not get a job with the type of competition with which we were confronted.

Mr. HARVEY. Second you are not so concerned with whether your competition is large or small business but whether it is closed shop or open shop. In other

words, as I gather the distinction in bids, the difference is largely between closed and open shop rather than between large and small business?

Mr. EISEN. No, sir; you missed one point. I said as a union general contractor we are definitely in an unfavorable position in competing with nonunion general contractor, but it would be an even greater competitive risk if the small business set-aside program were to be lifted, because then it would be an opportunity for the large contractors as well to compete with us in the type of work in which we are presently engaged.

Mr. HARVEY. Then you are not only competing with the open shop but with large business as well?

Mr. EISEN. Correct. It would be a double felony.

Mr. HARVEY. Yesterday, Mr. Haggerty, president of the Building and Construction Trades Department, AFL-CIO, testified here. He made several points in his testimony.

Let me read you his first point:

"First, there is no need in the construction industry for a set-aside program to promote a free and competitive enterprise system. The construction industry is already one of the most fiercely competitive industries in the country."

What you said certainly bears that out.

Then he went on to say this:

"In this connection, it should be noted that there are approximately 1 million employers in building and construction, the largest industry in this country today, and over 90 percent of these can truly be termed 'small businessmen' by any standard. No single firm or firms dominate the industry, which has been called the 'last large haven' of small businessmen."

Is that true in your judgment?

Mr. EISEN. Every statement you have made I would concur with, but what is the followup there? You said Mr. Haggerty said this?

Mr. HARVEY. Yes, he is in favor of this particular legislation and he urges its adoption to amend the set-aside program with regard to the construction industry.

He distinguishes the construction industry from other industries.

Mr. EISEN. My statement is that everything Mr. Haggerty has said there with regard to the amount of small businesses which exist in the field is true.

However, I differ with Mr. Haggerty greatly when he says that the elimination of the set-aside program would be beneficial to the industry. I say it would be extremely detrimental to small business.

Mr. HARVEY. And where he said this "The effect of the set-aside program in the construction industry is to stifle competition and free enterprise rather than encourage it." I take it you would be opposed to that statement, also?

Mr. EISEN. Definitely. I pointed out that in every project I bid there are numerous bidders, and if the committee desires, I can bring you the results of our bidding efforts so that you can see what competition does exist today even under the small business set-aside program. That is at least so with the jobs I bid. I have never bid projects without sufficient competition. There has been no stifling of competition.

I pointed out that I am now performing a project at Fort Belvoir where there were 12 small businesses bidding on 1 \$600,000 project.

Mr. HARVEY. I have no further questions.

Mr. PATMAN. Have you finished, Mr. Eisen?

Mr. EISEN. Finished my testimony, sir?

Mr. PATMAN. Yes.

Mr. EISEN. Yes, sir, unless you have other questions.

Mr. PATMAN. We appreciate your testimony, and if it is satisfactory with you, each member will be allowed to submit questions to you if he desires and we will ask you to answer them when you go over your transcript.

Would that be all right?

Mr. EISEN. Certainly, sir. You mean I could be called to another hearing like this?

Mr. PATMAN. Not necessarily, you would just answer questions submitted to you when you get the transcript.

At the end of the testimony you can take the questions and answer them.

Mr. EISEN. Certainly.

(Questions submitted to Mr. David T. Eisen by Hon. Wright Patman at the request of Congressman Multer with answers follow.)

EISEN-MAGERS CONSTRUCTION CO., INC.,
Bladensburg, Md., September 18, 1962.

HON. WRIGHT PATMAN,
Chairman, Subcommittee No. 2,
House of Representatives,
Committee on Banking and Currency,
Washington, D.C.

DEAR CONGRESSMAN PATMAN: In reply to your letter of September 15, 1962, requesting answers to the following three questions, I will, to the best of my recollection, attempt to answer them.

1. I would appreciate receiving detailed comments from you concerning the manner in which you, as an Associated General Contractors' member, were polled by AGC to obtain your thoughts concerning set-asides in the construction industry.

2. Further, state whether you consider that the issue was fairly presented to AGC membership.

3. In line with these questions, please provide any pertinent explanation which you feel will clarify whether the stand by AGC on set-asides in the construction industry represents the thinking of the majority of its members.

Answer 1. Some months ago, at a meeting of the Master Builders Association, our local chapter of the Associated General Contractors of America, the elimination of the small business set-aside program, as far as Government contracts for contractors is concerned, was submitted to the membership by Ancle C. Tester, of John Tester & Son, Inc. His statement, at that time, was that the national executive board, of which he is a member, favored the pending legislation, that the small business set-aside program is entirely too regulatory, tends to still further bring Government into private enterprise, that the implementation and operation by the Small Business Association was not consistent insofar as selection of small business is concerned, and that it prevents true competition in this field. This view was corroborated by Robert Moyer of Charles Tompkins Co., and, with no opposing discussion, a motion unanimously was passed informing the National AGC that this chapter was strongly objecting to the small business set-aside program as it affects the construction industry in Government contracts.

Answer 2. In answer to this question, I can only submit my personal feelings on this matter. I do not feel that the issue was fairly presented because only one side was discussed, no voice was heard in opposition, nor was anything said in defense of the program as it is now being administered. Frankly, I was sitting on my hands waiting for someone else to come to the defense of the program. I feel that I am now known as a maverick in the organization, and expected someone else representing a small business firm to air his views. Since no one seemed to have the temerity to buck the administration of our own organization, a vote was called, before any opposing discussion took place, and the record has it that the AGC-recommended sentiment was unanimously adopted. Needless to say, I abstained from voting.

Answer 3. If the manner in which this question was brought to the notice of our chapter is a criterion of the manner in which it was presented to the other chapters across the country, the motion, as passed, becomes the will and thinking of the executive board of AGC rather than the voice of the membership. Large business firms have an ax to grind and, I feel, have literally railroaded this legislation through the subordinate chapters, utilizing the influence that they can exert on the national body.

Sincerely,

DAVID T. EISEN.

Mr. EISEN. This testimony is incorporated in the total testimony taken on the construction set-aside amendment. As I say, I would like to offer that as my testimony today so that it can be incorporated in these proceedings.

In addition, hearing certain information this morning that was projected by Mr. Bannerman with regard to the subcontracting in our field, I would like to make a statement with regard to that, sir.

Senator McINTYRE. Go right ahead.

Mr. EISEN. It is very true that the Federal Government through the efforts of the Small Business Administration desires that a large

amount of work which is given to prime contractors be divided among subcontractors as well in order to spread the wealth, so to speak. But it must be taken into consideration that the prime contractor, the general contractor, on construction work—and now I am speaking specifically of construction work—must be a working contractor.

Many of our contract requirements make it necessary that the prime contractor perform through his efforts anywhere from 25 up to 40 percent of the work himself so that the Government is not dealing with a broker.

We are such a contractor. The firm that I represent here, Eisen Magers Construction Co., does a great part of the work on the construction contracts that we procure from the Government ourselves. The specific items that are usually subcontracted are the specialty fields, electrical work, mechanical work, including plumbing, heating, air conditioning, ventilating, roofing, and sheetmetal, and other specific trades that are not usually performed by a general contractor.

A general contractor usually performs the earthwork, concrete work, carpentry work.

The Government wants this, as far as my own knowledge is concerned, for the specific reason of having a working contractor, a contractor who is interested in producing the best type of building that they can procure for the money that they are paying. And the best type of contractor is one who has his forces on the job, who is not a broker that subcontracts every item on the job and performs a contract from his office alone—to the degree that many of our specifications require that the general contractor, as I said, perform anywhere from 25 to 40 percent of the total contract himself.

I think this is important, because it should be borne in mind that, whereas subcontracting is important from the standpoint of small business set-aside and giving small business an opportunity to partake of the Federal dollar spent in construction work, specifically in the construction field we as general contractors are required to perform a certain percentage of this work.

I have one more statement that I would like to make.

As far as I know, or as far as I am aware, there is no organization of small business contractors working for the Government as such. I am a member of the Master Builders Association, which is the local chapter of the Associated General Contractors of America. As you know, the AGC has gone on record formally as the proponent of the bill before the Senate. I am appearing because of the fact that there seems to be a lack of an organization of smaller contractors who should be here in force in self-preservation.

Seeing no organized efforts to that end, I am here personally to give my views on why I believe the current law as it stands should not be amended or emasculated.

When pieces are started to be dismembered from the act as a whole, it would not only be the construction industry but it would then go into other aspects of the total small business program, and we would be back to a point where monopoly or large companies get the major part of the work, leaving very, very little work for the smaller concerns, whether it be in general manufacturing or in general contracting in the construction industry of which I feel I am a member.

If there are any questions, I will be glad to answer them.

Senator MCINTYRE. I would be delighted to ask a lot of questions today, but we are operating in the interest of time, trying to close these hearings. I might invite you to stand by and listen to the testimony of Mr. Charles Grinnell, who is the executive vice president of the Smaller Business Association of New England.

I am not actually certain whether or not your group would be eligible for this sort of an organization, but we do have a very active group in New England that has done a masterful job over the years. Unfortunately, we will not be able to hear too much from him, to give him too much time. But I invite you to stand by and listen to a representative of New England's small business.

Thank you very much, Mr. Eisen.

Senator PROXMIRE. I just have one very brief question.

I think this was very helpful testimony. You are the first one who has cleared up something that has bothered me, and that is the basic work a general contractor would do.

We have not gotten the statistics yet—we are going to get them shortly—on subcontracting.

Mr. EISEN. I heard that this morning.

Senator PROXMIRE. But there is no question a great deal of work is subcontracted. But I still see there is nevertheless substantial remaining work you do.

Would you mind giving your own estimate of the amount, the dollar amount, of your contracts which are generally subcontracted in this military construction?

Mr. EISEN. Yes, sir. The subcontracted work that is usually performed on Federal contracts, military construction, that we have been engaged in now for some 12 or 13 years would amount to approximately 60 percent of the total contract amounts. We would perhaps be doing 30 percent of the work ourselves.

Senator PROXMIRE. How much of this 70 percent would be subcontracted to firms—I know it is hard to tell—who would generally be classified as large, that is, who would gross more than \$7.5 million, and how much would be subcontracted to those who would be in the smaller category? I presume most of it would be in the smaller category.

Mr. EISEN. Definitely, sir. The only time we would go to the larger contractors or larger producers would be, let us say, if I have an order of structural steel that I would give directly to Bethlehem Steel Co.

In the main, if I would take my 70 percent of subcontracts for the period of time that we have been performing work for the Federal Government, I would say that at least 90 percent of the 70 percent goes to small businesses.

Senator PROXMIRE. Very good. Thank you very much. That is very helpful testimony.

Senator MCINTYRE. Thank you very much for your helpful testimony.

Mr. EISEN. The testimony that I wish to submit for the record is incorporated in pages 111 to 121 of the September 1962 hearings of the Subcommittee No. 2 of the Committee on Banking and Currency, House of Representatives, 87th Congress, 2d session.

Senator McINTYRE. It has already been indicated that that will be printed as a part of the record.

Mr. EISEN. Thank you.

Senator McINTYRE. Is Mr. Gus Speros ready to testify?

STATEMENT OF GUS SPEROS, PRESIDENT, SPEROS CONSTRUCTION CO., MAXTON, N.C.

Mr. SPEROS. Mr. Chairman, my name is Gus Speros. I am president of Speros Construction Co. located in Maxton, N.C.

Last year I had the privilege of testifying before this committee in connection with the set-aside program in construction. At this time I would like to thank this committee for the honor and privilege of testifying again.

Since last June I have followed the construction set-aside program and have spent considerable time analyzing it so that I would fully understand this program.

I have prepared an abstract of all Government work which we have bid of any size in the Fort Bragg military area. I would like to outline these abstracts so that you gentlemen will have the opportunity to see from my experience that the set-aside program is not costing the Government money.

We are fortunate—or unfortunate—to have a company in our area who set up a subsidiary corporation to bid against us. These bids that they submitted were legitimate as far as price was concerned.

We were fortunate to be second bidder on a project on which a large firm, large construction firm, was first bidder. They were disqualified due to the fact they could not qualify under the Small Business Administration's construction set-aside program.

Senator PROXMIRE. Could I ask a question here?

Senator McINTYRE. Certainly.

Senator PROXMIRE. Could you indicate how much lower they were percentage-wise?

Mr. SPEROS. Yes, I will give you that, Senator. On one project, which was a three squadron operations building, we bid \$232,150. The large business concern which I referred to bid \$237,550. Another small business bid \$246,219. We were awarded this job as low bidder.

On battalion headquarters building there were only three small businesses that bid and no large. These bids were \$136,484, \$137,925 and \$140,738. We received award on this as low bidder.

On the administrative wing maintenance control facility at Pope Air Force Base the Government estimate on this particular project was \$113,000. We bid \$110,650. The large business firm bid \$109,700. Another small firm bid \$111,048. This means, in effect, that we were low bidder. We received the job at a cost of \$950 to the Government.

At Fort Bragg also small business bid hangars and shops at \$666,494. A large business firm bid \$687,867. And other small firms ranged from \$689,236 to \$699,169. This project was awarded to a small business concern at a savings of \$21,000 to the Government.

And this small contractor, who is a personal friend of mine, sub-contracted approximately \$150,000 of his contract to a large business concern.

Then we had again three motor repair shops at Fort Bragg where the Government estimate was \$543,000. A small business firm bid

\$491,336. Another small firm bid \$493,192. Another small firm bid \$494,147. And a large business bid \$555,000.

So, in effect, below the Government estimate, the small business concern which was awarded the project was \$50,000 below the Government estimate and approximately \$63,000 below the only large concern which bid this project.

Senator PROXMIRE. Now, most of these cases, giving a set-aside was unnecessary? Small business would have gotten it anyway?

Mr. SPEROS. No, sir. One particular case—

Senator PROXMIRE. In one case they would not.

Mr. SPEROS. That is right. They would not have. The Government would have saved \$950 had the set-aside program not been in effect.

Now, in addition to this, we have saved the Government considerable money due to the fact that we have been set up at Fort Bragg and Pope Field with field offices to do this type work, a quarter of a million dollars and \$100,000 and \$50,000, and so forth, for the Corps of Engineers.

At the same time, we have done approximately a quarter of a million dollars worth of \$10,000, \$20,000, \$25,000 jobs for the post engineers and for base procurement out at Pope Field. We would not have been able to bid the \$10,000, \$15,000, \$25,000 jobs from our office which is 40 miles away, unless we would have had office facilities at Fort Bragg.

Had large contractors gotten all the work that we had over there, they would not be interested in bidding that small work. So, therefore, in effect, it would cost the Government more for us to go in and bid the \$10,000, \$15,000, \$25,000 jobs because large business will not bid against us on that.

Senator PROXMIRE. Again, the set-aside program, however, was not necessary to enable you to make that bid or get that business?

Mr. SPEROS. Right. It was not necessary. But it was very helpful in us being over there.

I stated last year, and I will state again, we still feel that we can compete with large business. We have done it, as five examples show right here. The only project which they beat us on was \$950 on a \$110,000 job. So we can compete.

However, if a small business set-aside is done away with we do not know that we can compete because large business can go in and hog it all up and, as other gentlemen today testified, can take the work at cost or below cost.

Senator PROXMIRE. May I ask why in the world would big business do that? After all, there are 300,000 or more probably, many more, small firms. No one big company or no two or three companies can possibly really eliminate their competitors this way without going out of business themselves. I cannot imagine why a big business would bid below cost just to knock out some small business when there are so many hundreds of thousands of them all over the country.

Mr. SPEROS. In some of the gentlemen's testimony a while ago they specifically stated—I do not know whether you were present or not—instances where this had happened.

Senator PROXMIRE. Well, now, do they know the motive? You mean the big business said that they were doing it so they would eliminate small business?

Mr. SPEROS. Yes. If you will check the statement of Mr. Adelstein, I believe, of Northwestern Construction Co., he stated that a member of this large aircraft manufacturing firm——

Senator PROXMIRE. He is for the bill I understand.

Mr. SPEROS. I may have misquoted him. But one of the gentlemen a while ago quoted an aircraft manufacturer's representative as telling them they took the job below cost to give them that field of work.

Mr. MCINTYRE. May I interrupt? That was Mr. Hottel, I think.

Senator PROXMIRE. That was an aircraft manufacturing job?

Mr. SPEROS. Yes, sir.

Senator PROXMIRE. Well, yes, that is why I think we should have the set-aside. I am not against set-asides for manufacturing. But I say in construction that construction is a peculiar kind of industry because it is so competitive. You have so many small businesses. No one firm does more than one-half of 1 percent of all the business done. And there is great mobility. That is, you can do business in California or New York even though you are relatively small and qualify less than \$7.5 million gross.

Therefore, it seems to me there is no incentive under these circumstances for the large firm to say, "I am going to eliminate my competition."

But in manufacturing, particularly in some kinds of specialty manufacturing, I can see why a firm will say, "Let's go below cost and knock out the competition, and then we can get higher prices." But I cannot imagine people doing that as a pattern in the construction industry.

Mr. SPEROS. Senator, it is very expensive for small contractors to bid this work. Our cost of bidding is approximately one-tenth of 1 percent of the amount of the bid. So, therefore, we can only bid so much. And we have to select projects which we feel that large business is not going to take at a very low cost or we will go broke bidding and not get any work.

We have a number of cases down at Fort Bragg on housing projects. Some of our good friends in the general contracting business, which are small business, have thought they were smart enough to subcontract from a large contractor, and they have gone broke right and left.

I would like very much for this committee to check on Capehart housing projects and find out how much work was subcontracted to small concerns and how many of the small concerns went broke during the course of that construction. It is fabulous.

Senator PROXMIRE. Even in this Hottel case he did not want to break anybody else. He wanted to break into the field. He wanted to get experience to enable him to get into the field.

Mr. SPEROS. Yes.

Senator PROXMIRE. You will always get that kind of attitude on the part of business people who feel they are willing to take a loss until they can build know-how and experience, and I do not think the set-aside program would necessarily prevent that. But you make a point.

Mr. SPEROS. I have personally contacted a number of members of AGC and members of the construction industry in my area. The AGC strongly supports this bill.

I have reviewed every AGC bulletin which I have in my briefcase since I testified last June, and as yet I find nothing in our bulletin——

now, this is the Carolina Branch of AGC bulletin which is published weekly—that discusses this legislation at all.

So, therefore, I contend that the representation that AGC is giving here is not true in the Carolina Branch chapter because there has never been any publication on it. We never receive anything in the mail on it.

In other words, this is just a dormant thing as far as AGC in our area is concerned.

I will be happy to respond to any questions. That is all the testimony I have.

Senator PROXMIRE. I want to thank you very, very much. I think the testimony has been very helpful. You were awfully good last year. I think you were maybe the only contracting witness who appeared against the bill, and I think it was quite telling testimony.

Mr. SPEROS. No, sir; Mr. Young from Beaufort, S.C., also.

Senator PROXMIRE. You two gentlemen were together as I recall it.

Mr. SPEROS. Yes.

Senator MCINTYRE. Thank you very much, Mr. Speros.

Mr. SPEROS. Thank you, sir.

Senator MCINTYRE. The last witness is Charles W. Grinnell, executive vice president, Smaller Business Association of New England, Inc.

I would like to just make a brief remark, Mr. Grinnell, to the effect that I am a newcomer in the U.S. Senate, as you know, but I was very much impressed by the concise, objective meeting that we had the other day with your association, the way that program was put on; very telling, very effective.

STATEMENT OF CHARLES W. GRINNELL, EXECUTIVE VICE PRESIDENT, SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC.

Mr. GRINNELL. Thank you very much. I will pass the word on. Thank you.

Senator MCINTYRE. I think Senator Sparkman also made reference to it yesterday.

Senator PROXMIRE. Yes, he did.

Senator MCINTYRE. It was excellent. We will be glad to hear from you.

Mr. GRINNELL. I will be very brief. My name is Charles W. Grinnell. I am a resident of Wellesley, Mass. I am the full-time executive vice president of the Smaller Business Association of New England, Inc., with general offices in Boston.

Dedicated to the economic development of all small business in the New England region and in the Nation, the Smaller Business Association of New England was established 25 years ago and has been very successful in its efforts to foster and protect the interests of small business, not only at the local and regional levels but at the national level as well.

We have a membership list approaching 1,000 small business firms, representing almost every conceivable enterprise, and some individual members in the six New England States.

I am here at the unanimous direction of my executive committee which represents our 40-man board of directors comprised of mem-

bers from all six States. I am not here as an expert witness in any given field but rather as a sort of character witness for what, in our opinion, has been a very successful and helpful Government procurement program which the U.S. Congress, in its wisdom, sought to adopt and implement some years ago.

I refer, of course, to that reserved seat at the Government bidding table for the small businessman, otherwise known as the small business set-aside program. I do not consider myself an alarmist when I say it seems to me that this very successful program is on trial for its life.

We have no argument with the construction industry which seeks exemption from set-asides, but the board of directors and the entire membership of the Smaller Business Association of New England has supported the set-aside program from the outset. We have supported it in our annual presentations to Senate and House committees and to the New England delegation for years. Actually, our backing for this system is implied in the title of our organization. We have not changed our opinion.

Many small businesses in countless areas of endeavor can thank the set-aside program for their existence today, not to mention their continued growth and excellent health. Some \$10 billion in Government procurement funds have gone to small business since the inception of the Small Business Administration in 1953.

The purpose of this act was to give more small firms an opportunity to participate. Obviously, set-asides have enabled small business concerns to participate to an extent far beyond their wildest dreams had the program never existed.

So, in essence, I am here on a matter of principle only—not to argue with any one industry. The Smaller Business Association of New England has been, is, and will be 100 percent behind the set-aside program. It is our feeling that those who do not like set-asides are watching very carefully to see how the current effort to exempt one industry will be resolved. The entire program, as we see it, is, therefore, in jeopardy.

It is the firm conviction of the officers, directors and members of the Smaller Business Association of New England that set-asides have done, and will continue to do, much to promote a strong, healthy economy in the United States. There is great strength in the Small Business Administration's set-aside program.

Granting an exemption to one industry will weaken it substantially in that a precedent will be established upon which others who may not like it can build a case for future exemption efforts. Once this starts, the entire program will develop a severe case of anemia, and its muscle will atrophy.

Thank you very much.

Senator MCINTYRE. Senator Proxmire, any inquiries?

Senator PROXMIRE. I think this is a very strong statement. It is good to have people who are in a way disinterested, because, as I understand, you represent a small business association representing not simply construction people but the whole gamut of small business.

Mr. GRINNELL. That is correct, sir.

Senator PROXMIRE. On the other hand, what concerns me, Mr. Grinnell, is that I think that there are circumstances in the construction industry which differentiate it from most other industries.

Would you not concede that you have an industry in which you have no dominant firm—that is, no firm that even produces 1 percent, sells 1 percent of the total of the industry? You have an industry in which there is ease of access. It does not take much capital to get established. You have an industry in which a relatively small amount of capital can give you maximum efficiency. And you have an industry in which without the set-aside program three-quarters of the military construction work went to small business. Do you not therefore have an industry in which you can give some fair consideration to having it operate outside of a program which knocks out part of American industry and says, "You just cannot get Government business; you are not allowed to compete?"

Mr. GRINNELL. Well, perhaps you are right, sir, but it seems to me that it is impossible to compare the volume of three-quarters of the amount of business that small business got with the Government back before the set-aside program simply because of the volume today by comparison.

Senator PROXMIRE. That was 1958. That is fairly recent; that is 5 years ago. True, there is a difference in volume. But the volume is not so enormously greater.

What I am driving at is this: I think you are right to fight for small business to get a bigger share and bigger opportunity. But I am inclined to feel the set-aside program in construction just does not seem to be doing it.

If, without the set-aside program, you have three-quarters of the business and with the set-aside program you have a third of the business, obviously this alone will not do.

It would seem to me that focusing more (a) on subcontracting, a vigorous subcontracting program, and (b) on subdividing the prime contracts so that small business would be better qualified from the standpoint of capital, and so forth, to do the business might be a more promising avenue of approach.

Mr. GRINNELL. Well, I would like to stick to my basic thesis, which is any intrusion in this program is going to weaken the whole program.

Senator PROXMIRE. Of course, if we adopt that attitude—and I think I understand that and I think it is a good argument—but if we adopt that attitude that means that the Congress of the United States is not in the position to determine that there may well be some industries that do not want the program.

Although we have had fine people like Mr. Speros in the industry and others who have testified today who want it, by and large the testimony we have got from the industry is that they do not want it. Labor does not want it. The taxpayer has to pay a little more; how much we do not know. There is a difference of opinion, but he has to pay a little more.

It seems to me the Congress should not be bound simply because they feel that we have a set-aside program and if we eliminate this section, which can be eliminated on merit, others sections which cannot be eliminated on merit are likely to get in line, too.

We have not had any requests to my knowledge of other industries that want to be exempt from this program, and I do not think they can make a case.

I think you make an argument, but in view of the fact that we have not had the manufacturers in who want to be exempt from it—or have we?

The counsel, Mr. Barnes, does not have any knowledge of any other group that is anxious to escape from this program.

I am just wondering whether or not that argument should be considered with full force, although I think you certainly offer it sincerely and you make about as strong a case for it as could be made.

Mr. GRINNELL. Thank you, sir.

Senator PROXMIRE. Thank you very much for what I think is a fine presentation. And Mr. Grinnell certainly does represent an outstandingly successful group.

New England, I think, has shown the way to the rest of the country. I say that as a Wisconsin Senator. In this regard you have done very, very well, and I hope we can follow your example.

Mr. GRINNELL. Thank you, Senator.

Senator McINTYRE. I am glad to see Mr. Eisen stayed to hear Mr. Grinnell's testimony.

Thank you very much. We appreciate it.

Mr. KAPLAN. I wonder if I might have the opportunity to discuss with Senator Proxmire for about 2 minutes some of the statements he made just now?

Senator McINTYRE. You can grab him afterward.

Senator PROXMIRE. Do you want to do that on the record before the committee for 2 minutes now?

Mr. KAPLAN. I would like to do it on the record now.

Senator PROXMIRE. Or informally?

Mr. KAPLAN. On the record.

Senator PROXMIRE. As far as I am concerned, on the record is all right. I will take the chair. It is late, but go right ahead.

What is your name, sir?

**FURTHER STATEMENT OF FRED L. KAPLAN, VICE PRESIDENT,
MSI CORP., WHEATON, MD.**

Mr. KAPLAN. Fred Kaplan. I am vice president of MSI Corp. You were absent when I read my statement.

Senator PROXMIRE. What does "MSI" stand for?

Mr. KAPLAN. MSI. It was Missile Sites, Inc., shortened from that. And it is a construction firm involved primarily in Government work.

We are as of June 30 big business. And I testified today for the small business set-asides.

I have heard you repeatedly remark about the characteristics and nature of the construction industry being such that it did not seem to apply to the set-asides because of the ease of entry into the field, and so forth.

I would like to clarify the situation to this extent: That, first of all, we are not talking about the entire construction industry. We are talking about the portion of the industry which the Federal Government regulates and lets.

Senator PROXMIRE. Which the Federal Government regulates?

Mr. KAPLAN. Well, I mean it contracts. We are talking about only Federal work. We are not talking about a set-aside program for the State of Indiana. We are talking about money which the Federal Government is spending.

That eliminates about 93 percent of all the contractors in the United States, because as of 1962 the number of firms doing Federal Government work over \$100,000 in volume, which is relatively a small job, was under 2,000.

So where we start out with a huge base of contracting organizations which primarily consist of one- and two-man outfits, we have suddenly squeezed it down to a relatively small number of firms considering the volume that is being expended.

Senator PROXMIRE. Would you not agree 2,000 firms, however, is enough to give pretty vigorous competition?

Mr. KAPLAN. Yes; if they were competing against each other all the time. But they are not.

Senator PROXMIRE. Even 100 firms would be enough to give vigorous competition.

Mr. KAPLAN. Again if they were competing against each other.

What I am driving at is that the very flexibility and mobility you mentioned as being a deterrent is actually in favor of monopoly growth.

A small business contractor is unable to move around the country and bid successfully because of the overhead costs, and so forth, in Ohio or Illinois or California.

Senator PROXMIRE. In the first place, what do you mean by small business? Do you mean a firm that grosses \$7 million a year is not able to bid around the country?

Mr. KAPLAN. That is the official definition. I myself personally—

Senator PROXMIRE. They are the ones who have the business set aside for them.

Mr. KAPLAN. Right. I personally do not believe that the majority of firms that do qualify for small business ever do anywhere near that amount of money, and this would be an important factor.

That was recently raised I believe, within the year, from \$5 million, and actually most small business firms do probably between \$3 million and \$4 million a year in a specific location. They do not travel around the country.

I speak from a great deal of experience, because our firm was one which started in Washington, D.C., doing Government work and did expand on a national basis and eventually went from the small business category to the big. And we were the rare exception rather than the rule.

Senator PROXMIRE. Let me ask you: Are you arguing there are not enough competitive bids on Government projects?

Mr. KAPLAN. Oh, no.

Senator PROXMIRE. Then if you have enough competitive bids, that is all the competition we really have to be interested in. The fact you have only 2,000 instead of 300,000 firms active it seems to me is not relevant as much as the fact that you have real competition, dollar competition, competition which guarantees the Federal Government procurement at a good price that is close to cost.

Mr. KAPLAN. Yes; I agree that there is effective competition today, although I mentioned in my statement that some of the competitive bidding practices have been taken advantage of recently.

For instance, the GSA in two awards spent more of the Federal Government's money this year than was ever expended in the small business program for additional costs to small business contractors versus large contractors.

In awarding contracts on the New York Federal post office and the Kansas City post office to the second and third bidders, the amount of money which the Government paid over and above what the low bidder would have been was about four times the total amount spent in the last 3 years in the small business program.

Senator PROXMIRE. This is aside from the set-aside program?

Mr. KAPLAN. Yes, of course. But this is one of the issues raised by the set-aside program—that it is costing us a little bit more money to subsidize small business firms and individuals. Yet in just two awards the Government has spent I think about \$4 or \$5 million to give to bidders in my opinion completely unwarranted and a breakdown of the competitive system. It has done that in two awards, whereas I do not know how many thousands of awards were made to small business—

Senator PROXMIRE. Why did they give it to the second and third bidders instead of the first?

Mr. KAPLAN. The public statement made was that they did not believe that the low bidder was qualified to do the job.

Senator PROXMIRE. Financially not responsible or something?

Mr. KAPLAN. They did not say why. As a matter of fact, on the New York job the bid was skipped over from the second to the third.

Senator PROXMIRE. I would appreciate it very much as a U.S. Senator if you would call that kind of situation to my attention, and I will be happy to have the Comptroller General make an investigation. They will always make an investigation when a Senator requests it.

Mr. KAPLAN. I believe, sir, Senator Williams already started that.

Senator PROXMIRE. Very good. Whenever these situations develop, we are delighted to go into them.

I think you make a legitimate point. Nevertheless, it seems to me that this does not justify eliminating firms which are taxpayers employing people who are taxpayers from bidding on Government work.

Now, I do not say that the case has been made completely for this bill, and I think it is a strong case for it, but I think that the burden of proof should be on those who say that we should set aside this work and say no business which grosses more than \$7.5 million can have a right to bid on the Government work even though they pay their taxes and comply with the laws. They are good citizens but they are excluded, they are out of it. They do not have a chance to get in on this.

Mr. KAPLAN. I think this all goes back to what we consider the basic philosophy behind this, and we are talking about an attempt—

Senator PROXMIRE. Yes, I would agree that you have to have a set-aside program in some areas. But I am just wondering if in this area where we have strong competition, many firms, success on

the part of the smaller firms, you need this particular privilege and this particular exception in order to keep small business alive.

Maybe the case has been made. Senator Sparkman, who is a very wise man and an able man, certainly thinks so. I am not sure I do.

Mr. KAPLAN. Well, my final question to you, sir, would be that you stated that without the small business program of set-asides, small business received approximately 73 percent and then with the program it kept dropping. And my question would be that if it is dropping and big business is getting a larger share in spite of the program, why are they here today to cancel the set-asides?

Obviously there is some benefit accruing to large business to cancel set-asides even though the percentage of work is continually dropping under that program.

Senator PROXMIRE. Well, I think that they are here because they feel they ought to have a right to go after business. But the point that I am trying to make is that this is not the effective way to give small business a better chance.

A more effective way, I say, is by a subcontracting system that works. And maybe it is working well. We do not have the figures now but we are going to get them in the next few days. And also by a system of insisting on the Defense Department, GSA, Space, and so forth, wherever they can do so, breaking down these contracts into sufficiently small amounts so that small business will have an opportunity to get in on this and to make a bid.

In doing this they will be able to hold Government costs down and be able to participate more than they have in the past in Government procurement.

Mr. KAPLAN. I agree with you on those points wholeheartedly. That was the very first point I mentioned as being one of the side issues involving assistance to monopoly—

Senator PROXMIRE. On this there is no privilege involved, no special exception involved, no exclusion involved. And it seems this is a method by which we can get more for the taxpayer while at the same time giving small business a better break.

Mr. KAPLAN. However, in the final analysis, I think it will be shown particularly in the next few years due to the nature of the growth of the construction industry, the technological increase in jobs, size, and so forth, that this industry is pretty much like any other industry and that wherever possible the larger the firms grow the more they do stultify small business and take advantages particularly in the subcontracting field.

I think you might be familiar with the activity in the aircraft and automotive industries where once large business decides that it is going to control subcontracting it does dictate to the so-called independent businessman to the extent that they will even determine prices which they will pay or else do the work themselves, and as a result the profit margin generally is squeezed out of the small independent businessman and accrues to the larger firms.

And this is exactly what is and will happen in the construction industry.

Senator PROXMIRE. I think you are right about the subcontracting problem, and we hope we can at least start by getting the facts.

Thank you very much. I appreciate your coming up a great deal.

As was said by Senator McIntyre, this will conclude the hearings on the bill, and the record will be left open for a reasonable time.

Thank you very much for participating. This was another stimulating day. We are adjourned.

(Whereupon, at 12:55 p.m., the subcommittee was adjourned subject to the call of the chairman.)

(The following "position paper" was submitted by Mr. Horne, Small Business Administrator:)

CONSTRUCTION SET-ASIDES, MARCH 22, 1963

1. Introduction

The Small Business Administration (SBA) is operating a program under which Government construction contracts are set aside for competitive bidding by small contractors only. This program has been subjected to criticisms and attacks.

The criticisms of the program are, to a large extent, the result of erroneous information and misconceptions. This paper is designed to throw light upon the subject so as to clarify the need for and the manner of operation of the set-aside program.

2. What are set-asides?

When a Government procurement has been reserved for exclusive bidding by small firms only, it is said that it has been set aside for small business. A set-aside is, thus, a Government procurement reserved for the exclusive competition of small business firms. It is a means of assuring small businesses an opportunity to compete with other small businesses for Government procurements.

3. Why set-asides in construction work?

The Congress of the United States has determined that in order to maintain and preserve the small business segment of the national economy, it is necessary that a "fair proportion of the total purchases and contracts for property and services for the Government" shall be placed with small business firms. To this end, Congress, in section 2(a) and 15 of the Small Business Act, has declared it to be its policy, and directed, that all Government agencies utilize all means properly available to set aside a portion of all Government procurements exclusively for small business participation, so as to assure small businesses the opportunity to bid on and receive a fair share thereof.

Official statistics show that in 1962, publicly financed construction, both Federal and State, amounted to approximately \$17.6 billion. Of this amount, only about one-half billion dollars was set aside for exclusive small business competition, leaving the remaining \$17.1 billion for unrestricted large business competition.

Large business, although representing but 10 percent of the construction industry, is receiving over 50 percent of all Federal military construction awards. Stated differently, 90 percent of the industry, all small business firms, is receiving less than 50 percent of all military construction awards, and their share is still on the decline. In fiscal year 1958 small business concerns were awarded 72.8 percent of the dollar value of all military construction procurements. Since then, the small business share of military construction contracts declined from the previous 72.8 percent to 50 percent in fiscal year 1960. A further decline has set in during fiscal year 1962, and the figure sank to 47.8 percent. In the first 6 months of the current fiscal year, it sank further to 38.4 percent. This decline in construction awards to small business—from 72.8 percent in fiscal year 1958 to 38.4 percent in the first half of fiscal year 1963—resulted in a percentage decline of almost one-half; dollarwise, the decline is even greater. Thus, the total dollar value of military construction in fiscal year 1958 amounted to \$1.5 billion. Of this, small business received approximately \$1.1 billion. In the first 6 months of fiscal year 1963, the total dollar value of military construction awarded to small business was only \$166 million. Hence, the dollar value of military construction awards to small business decreased from \$1.1 billion in

fiscal year 1958 to \$166 million in the first half of fiscal year 1963, i.e., by approximately 66.3 percent.

These statistics speak for themselves. The small business share of military construction is steadily declining and small construction firms, representing 90 percent of the industry's membership, are rapidly being displaced from Government work by their big competitors.

4. How are construction set-asides and contract awards therefor made?

The set-aside program is a relatively simple one. Its purpose being to assure small businesses the opportunity to bid on and receive a fair share of Government contracts, SBA has assigned representatives to certain principal Government purchasing offices. These SBA representatives and the procurement officials of these purchasing offices review proposed construction projects, determine the type of facilities needed to perform the contracts and which, if any, small firms are capable of performing the contracts. They evaluate the prospects for small business competition and, if there is a reasonable expectation that bids will be made by a sufficient number of responsible small business firms so that awards will be made at reasonable prices, these construction projects are recommended by the SBA representatives as suitable for competition exclusively among small firms. Thereafter, a construction project or projects may be set aside by the procurement officials for small contractors' competition. Contracts are awarded to the lowest responsive responsible bidders. However, if during this competition it appears to the contracting officer, after the bids are opened, that the low bid from a small contractor is not fair and reasonable, he may reject all bids. The procurement is then readvertised for open competition.

5. Does SBA encourage competition in the construction industry?

It is alleged that SBA officials have stated that the construction industry needs more competition "and the way to get more competition is to get more small firms to come into the business." This allegation is followed up with an assertion that SBA is encouraging new entries into the construction industry by financing, technical advice, and set-aside offers. These allegations are not true.

The SBA does not encourage or induce any individual or firm to enter any industry, construction or other. While it is SBA's duty to assure "free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment," in accordance with the policy expressed by the Congress of the United States in section 2(a) of the Small Business Act, SBA has always limited its activity solely to aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns in all industries, including the construction industry. This, however, never meant nor does it mean today that SBA is inviting people to enter any specific industry. On the other hand, any eligible bona fide small businessman is entitled by virtue of law to all SBA assistance programs provided under the provisions of the Small Business Act.

6. Loans to inexperienced competitors

It is asserted that SBA is creating inexperienced competition 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." To prove this charge, it is said that "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."

In substance, this assertion constitutes an attack upon the SBA loan program. The attack is based on an allegation that SBA is operating its loan program in an unbusinesslike manner. This, however, is not true.

SBA is not in the banking business in competition with private financing institutions. Its loans are solely designed to meet legitimate needs of those eligible and credit-worthy small firms which are unable to secure financial assistance from normal commercial channels. Consequently, when an eligible and credit-worthy small business applicant is turned down by private lending institutions, SBA may step in and, provided there is reasonable assurance of repayment, render financial assistance.

SBA does not extend credit to a borrower who is considered a poor credit risk. In fact, due to the prudence exercised by SBA in this respect, the estimated dollar rate of loss, evaluated as of June 30, 1962, was only 1.7 percent in construction loans as against 1.3 percent of all other business loans. It is believed that these figures effectively refute the false impression created by the above allegations.

7. *Certificates of competency*

Criticism is leveled at certificates of competency issued by the SBA. The reason for the criticism is that certificates of competency must be recognized by all Government procuring agencies "as the last word on qualifications to do the job."

In order to realize the baselessness of this criticism one need know, first, what a certificate of competency (COC) is and when and how it is issued.

Basically, the decision whether a small construction contractor is capable of performing a particular construction contract rests solely with the contracting officer. However, where the contracting officer doubts the capability of a small firm, section 8(b)(7) of the Small Business Act empowers the SBA to certify that the small contractor has the capacity and credit to perform, and such certification must be accepted by the procuring agency as conclusive.

In each case, however, SBA conducts a thorough and careful investigation and analysis of the small firm's financial and technical ability to perform the specific contract, and in each case the COC is issued—if issued—because the investigation and analysis established a reasonable assurance that the contract can be satisfactorily performed.

The lack of foundation for the attack upon the COC program is evidenced by the fact that representatives of the Department of Defense (DOD) testified before the Congress to the effect that it is not aware of any cases where the Government has received less than the requisite quality of products and services in contracts with small business firms. It was further stated that "All prospective contractors being considered for defense awards (including awards under small business set-asides) must meet the minimum standards for responsible contractors."

This statement is borne out by the fact that in the 10 years, from 1953 to date, only slightly more than 30 construction contracts were performed after issuance of a COC and only one has been terminated by default. This amply proves that SBA does not lightly certify competency.

8. *Who makes construction contract awards?*

It is being charged that in administering the set-aside program "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."

Those who prefer this charge prove that they are little familiar with the procurement procedures. They do not know that competitive bidding is just as much present in construction procurements, which are set-aside, as it is on set-aside purchases of property and services generally. There is no difference in this regard between the construction industry and any other industry providing products and services for the U.S. Government.

All that the set-aside program accomplishes is that it eliminates competition by big business which, in essence, is what Congress intended in authorizing the setting aside of procurements exclusively for small business participation. Set-asides on construction are not initiated by the SBA, or agreed to by the contracting agency, unless there is a reasonable expectation of serious competition by a sufficient number of responsible small business concerns so that awards may be made at reasonable prices. Besides, SBA has no part in the award of the contract, for this is the exclusive prerogative of the contracting officer, and SBA's set-aside function is completed when the procurement has been set aside for small business competition.

9. *Do construction set-asides result in higher costs to the Government?*

Another misstatement relating to the set-aside program is the claim that "SBA officials have expressed no concern over additional cost to taxpayers."

This charge proceeds from the erroneous assumption that construction set-asides result in additional costs to the Government.

The procurement agencies of the Government have repeatedly asserted that they have no conclusive evidence that the small business construction set-aside program involves additional costs to the taxpayer. Besides, they point out, protection against unreasonable prices lies in the fact that pertinent regulations (Armed Services Procurement Regulation 1-706.3(b)(1)) provide that "If, prior to the award of a contract involving an individual or class set-aside for small business, 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 may withdraw a unilateral

set-aside determination or initiate the withdrawal of a joint set-aside determination," and readvertise the requirement obtaining large business competition.

It should further be noted in this connection that the procurement regulations (Armed Services Procurement Regulation 4-101.2) require Government engineers designing the technical specifications for a construction contract, expected to cost more than \$10,000, to prepare an advance estimate of the costs involved. 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 procurement.

10. *The set-aside program and job brokerage*

Another unjust criticism of the set-aside program is that it allegedly "fosters job brokerage by encouraging a small contractor who has received a Federal contract under the set-aside program to turn around and subcontract all or part to a larger contractor.

While "job brokerage," as understood in the construction industry, means the subcontracting of an entire construction project undertaken with the intent of so subcontracting, it is universally known and recognized that the nature of and special conditions that exist in the construction industry are such that prime contractors in construction, maintenance, and repair, as a matter of practice and policy, generally do subcontract a large percentage of their construction work. This condition varies, depending on the nature and type of construction to be performed. Section 4-104.1 of the Armed Services Procurement Regulation (ASPR) recognizes this custom in the construction industry, but requires the contracting officer to control the amount of such customary subcontracting, and directs him not to allow it unless consistent with customary or necessary specialty subcontracting such as plumbing, heating, electrical, and air-conditioning work, and in accordance with the complexity and magnitude of the work.

Thus, with subcontracting an accepted and necessary practice in construction, and the quantity thereof rigidly controlled by the cited regulation, it cannot be said that the set-aside program encourages the practice of "job brokerage."

11. *What is a proper size construction contract to be set aside for small firms?*

The question has been raised "What is a proper size of contract to be set aside" for small construction firms? A complaint is being voiced in this connection that "SBA officials have refused to define 'fair share.'"

Since 1958 small construction firms have been awarded each year a smaller percentage of Federal Government construction contracts. In fiscal year 1958, the small contractor percentage was 72.8 percent. In the first half of fiscal year 1963, it was only 38.4 percent.

This monopoly of large construction firms, which constitute only 10 percent of the construction industry, over Federal Government construction contracts has caused, and is continuing to cause the SBA, and the small construction firms, much concern. The many inquiries to the Department of Defense (DOD) and civilian Government agencies have been met generally with the explanation that the magnitude of many construction projects lies at the root of the problem. According to this explanation, construction complexity has forced upon the Government construction contracting which unavoidably favors the major construction companies, capable of meeting the Government construction requirements.

Thus, in order to reverse this economically dangerous trend to the small construction contractor, SBA is faced with the necessity to carve out some slice of construction contracts for qualified small contractors, at least in those fields where small contractors' capability is undeniable. Hence, it is not the size of the construction contract which must be taken into consideration in recommending a set-aside to the procurement authorities, but the nature of the project and the capabilities of small contractors to perform the work.

Viewed from this perspective, the question—"What is a proper size contract to be set aside?"—or the complaint that the term "fair share" is not circumscribed in precise figures, can be answered only by saying that a proper set-aside contract is one which a sufficient number of small firms can perform and are willing to compete for, so as to assure the Government a reasonable price. If this course were to be followed consistently without interference by the large construction firms, the very nature of the present day Government construction projects would assure a "fair share" of contracts to both large and small firms in the industry.

12. Construction contracts are not "automatically" set aside

The manner in which set-asides are made has been described hereinabove under the heading "How are construction set-asides and contract awards therefor made?" Notwithstanding, however, the simplicity of the set-aside procedure, a misunderstanding is persistently expressed, that all construction contracts between \$2,500 and \$500,000 are automatically set aside for small business, and that it is the SBA which makes these set-asides.

That is untrue, for no construction contract can be set aside for small business by anyone but the procuring agency. SBA can only recommend in this matter.

Where SBA has reason to believe that the statutory and regulatory criteria for a set-aside—the availability of a sufficient number of qualified small business concerns to assure competition at fair and reasonable prices—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 to reject a recommendation. The final authority is in the procuring agency.

The application of this procedure to construction contracts is merely an extension of the class recommendations SBA had made in other industries for items such as adhesives, ready-mix asphalt, boxes and crates, cement, etc. 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 SBA had made a specific recommendation to restrict it to small business.

13. Are complaints against set-asides by organized labor justified?

A grievance is being voiced by some representatives of labor who claim that small business contractors who receive awards under construction set-asides are not paying the prevailing wages provided by the Davis-Bacon Act.

This criticism is untrue. The small construction concerns are not enjoying any preferential treatment as regards compliance with the provisions of the Davis-Bacon Act (49 Stat. 1011). Compliance with the prevailing wage provisions of that act is required, regardless of size, of all contractors performing Government construction contracts in excess of \$2,000. There is no method whereby a small construction contractor can legally avoid the provisions of the act.

14. SBA's subcontracting program

Although SBA's subcontracting program is in no way related to the set-aside program, opponents of small business are coupling their attacks upon the set-aside program with various attacks upon and untrue allegations relating to the subcontracting program.

These opponents of the program fail to tell that because set-asides alone proved insufficient to insure that a fair proportion of contracts involving Government purchases of supplies and services be placed with small business enterprises, it was the Congress which enacted, in September 1961, the small business subcontracting program.

The subcontracting program was designed to provide for wider participation by small business in the subcontracting phase of Government procurement, but it gives no powers to SBA to direct any prime construction contractor to do or not to do anything. All the act accomplishes is to empower SBA to confer and consult with prime and subcontractors on problems affecting small business subcontracting. There is even now no reliable method by which small business can be assured of subcontracts, the recently enacted subcontracting provisions of Public Law 87-305 notwithstanding, except through the cooperation of the prime contractors.

The SBA is doing all that is in its power in order to obtain this cooperation. It is sending teams to the major Government prime contractors with the avowed purpose of building good will, gaining a better understanding of their operations, and how small business fits into their defense work. Most of the large prime contractors are cooperating freely in this new subcontracting program, and SBA hopes that construction contractors will follow this example.

15. Conclusion

The construction set-aside program has as its sole purpose to give those small construction firms, which have the capability of meeting the Government construction requirement, an opportunity to obtain a fair share of Government construction contracts. The basic philosophy of this program is to enable small construction contractors to participate equitably in the Government's construction business, without sacrifice of the primary objective of high quality at reasonable cost.

Experience proves that the small contractor's share of Government construction would be inequitably reduced if authority to make small business set-asides were not available. 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 pressure, Congress may 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.

The future of competition in the construction industry depends upon the survival of the small contractors therein, and the set-aside program tends to accomplish this.

Federal Government contracts—Analysis of participation of small business concerns in contracts secured by Blount Bros. Corp. as prime contractor, years 1958-62

Project	Calendar year	Prime contract amount	Number of sub-contracts	Subcontract amounts	Number of small business sub-contracts	Amount of small business sub-contracts	Government agency
Pressure water tunnel.....	1958	\$2,797,234.00	22	\$1,722,746.35	21	\$1,721,196.35	U.S. Navy.
Rotating arm.....	1958	11,038,325.67	24	9,015,640.61	19	5,429,759.32	Do.
Vacuum sphere.....	1958	63,530.00	1	44,050.00	0		U.S. Army.
Class and laboratory.....	1958	2,435,047.12	16	1,478,833.03	16	1,478,833.03	Do.
Surface treatment.....	1958	1,613,241.20	18	794,510.28	18	794,510.28	Do.
Technical library.....	1958	943,747.83	18	634,325.37	18	634,325.37	Do.
Troop housing.....	1958	1,337,318.24	16	1,030,714.59	15	1,035,046.59	Do.
Building and utilities, Bates Field.....	1958	1,649,240.25	20	1,022,590.82	19	963,823.12	Do.
Bomare, Otis AFB.....	1958	7,042,100.00	23	4,142,533.37	22	4,138,014.37	Do.
Propulsion wind tunnel, Tullahoma.....	1958	2,099,573.22	9	1,024,675.98	7	1,022,486.98	Do.
Atlas launch, Cheyenne.....	1959	22,423,000.00	26	12,158,806.80	25	12,136,062.80	Do.
Microwave, Cheyenne.....	1959	330,870.35	10	240,240.16	10	240,250.16	Do.
Nose cone, Cheyenne.....	1959	681,769.69	14	287,232.81	13	283,594.70	Do.
Bomare, Raco.....	1959	3,136,662.70	21	1,970,323.29	18	1,968,973.89	Do.
Bomare, Duluth.....	1959	3,271,890.62	20	2,130,397.09	18	1,551,533.93	Do.
Bomare, Langley.....	1959	1,931,638.98	15	794,761.99	15	794,761.99	Do.
FOB, Charleston.....	1959	2,677,106.00	19	926,315.77	18	898,565.77	GSA.
Dining hall, Duluth.....	1960	2,211,761.26	13	145,822.12	13	145,822.12	U.S. Army.
FOB, Parkersburg.....	1960	3,042,907.20	28	1,401,534.25	27	1,406,498.46	GSA.
Pen, Marion.....	1961	18,310,000.00	22	4,456,841.71	21	4,416,835.71	GSA.
Complex 37.....	1961	18,790,000.00	25	11,449,195.01	20	4,151,912.13	U.S. Army.
Propellant storage.....	1961	13,373,000.00	3	2,012,494.45	2	1,572,494.45	NASA.
Launch pedestal, pad "B".....	1961	1,419,000.00	5	373,820.00	5	373,820.00	NASA.
Test cell, Tullahoma.....	1961	1,10,401,000.00	17	4,436,985.28	15	2,916,450.69	U.S. Army.
Pad "A", Canaveral.....	1962	14,644,000.00	13	3,197,007.13	13	3,197,007.13	Do.
Total.....		114,910,965.33	418	66,992,371.26	388	53,263,641.34	

Total subcontract amount = 66,992,371.26
 Total prime contract amount = 114,910,965.33
 Number of small business subcontracts = 388
 Number of total subcontracts = 418
 1 Contract amount not final.

Small business subcontract amount = 53,263,641.34
 Total subcontract amount = 66,992,371.26 = 79.5 percent
 Small business subcontract amount = 53,263,641.34
 Total prime contract amount = 114,910,965.33 = 46.3 percent

Senator Robertson furnished for the record the following list of persons who have communicated with him in regard to S. 757. These communications have been brought to the attention of the committee.

IN SUPPORT

Leon B. Kromer, Jr., executive vice president, Mechanical Contractors Association of America, Inc., New York, N.Y.
 C. W. Amis, vice president, Missouri Valley Machinery Co., Omaha, Nebr.
 R. H. Pearson, president, Air Rentals, Inc., Denver, Colo.
 Frazier H. Pair, Montgomery, Ala.
 Albert R. Gremse, Montgomery, Ala.
 Richard J. Sahrman, president, and Norman C. Cibulka, treasurer, Granite Bituminous Paving Co., St. Louis, Mo.
 W. Ohlson, president, the Coast Sash & Door Co., Tacoma, Wash.
 Ed. H. Honnen, president, and J. E. Woods, general manager, McCoy Co., Denver, Colo.
 Downey C. Clinch, president, Alpha Industrial Supply, Nevada City, Calif.
 J. L. Jones, vice president, and Al Boyles, director of public relations, H. L. Coble Construction Co., Greensboro, N.C.
 Harry C. McGahey, president, San Diego Lumber Co., San Diego, Calif.
 R. L. Rhodes, vice president, Alpha Portland Cement Co., Easton, Pa.

IN OPPOSITION

K. Brown Amole and W. B. Lomax, Jr., Vista, Va.
 Charlie Dillon, Rocky Mount, Va.
 Gallion-Elder Insurance Agency, Victoria, Va.
 Henry J. Willard Foster Industries, Inc., Falls Church, Va.
 R. E. Gray, Pyramid Body Works, Norfolk, Va.
 Wallys Aquarium, Arlington, Va.
 James T. Brown, manager, Als Brake Service, Norfolk, Va.
 C. W. Long, New Market, Va.
 Fred W. Early, Midway Electric Co., Charlottesville, Va.
 R. B. Poland Boykins, Va.
 Eugene Stewart, president, Chamber of Commerce, St. Paul, Va.
 Braddy B. Crim, Crim Floor Covering, Portsmouth, Va.
 Melvin L. and Violet M. Blythe, Farm Equipment Co., Smithfield, Va.
 F. S. Williams, president, Williams Supply, Inc., Roanoke, Va.
 H. O. Engen, Vienna, Va.
 J. B. Norfleet, Richmond, Va.
 E. H. Diehl, Old Mill Antiques, Staunton, Va.
 George Constantine, Baco Co., Inc., Arlington, Va.
 Wilma DeMuth, Charlottesville, Va.
 O. Lewis Roach and Thomas B. Gray, Danville, Va.
 F. L. Watson, Lynchburg, Va.
 William H. Merriken, W. H. Case Plumbing & Heating, Bedford, Va.
 Hugh R. Ross, Madison, Va.
 C. E. Altman, C. E. Altman Equipment Co., Orange, Va.
 W. Eugene Bartley, Orange, Va.
 Paul E. Whitehurst, Jr., Paul's TV, Bayside, Va.
 Lloyd O. Goode, Goode's Shoe Shop & Sporting Goods, Bedford, Va.
 Don T. Parker, Bedford, Va.
 James M. Jones, Jr., Jones & Co., Crewe, Va.
 W. N. Thompson, M.C., Stuart, Va.
 Russell Burroughs, president, Advance Space Age Products, Inc., Alexandria, Va.
 Oliver H. Stoneburner, Front Royal, Va.
 W. D. Sams, Jr., W. D. Sams & Co., Norfolk, Va.
 C. R. Maddox, Jr., Maddox Funeral Home, Front Royal, Va.
 L. L. Sandridge, Sandridge Upholstery Shop, Charlottesville, Va.
 Hugh W. Brinkley, secretary and treasurer, Stokley's Services, Inc., Norfolk, Va.
 Richard W. Newton, A-D Supply Co., Norfolk, Va.
 D. M. Penny, president, Brown-Morrison Co., Inc., Lynchburg, Va.
 R. C. M. Calvert, Jr., Newport News, Va.
 Mrs. Elsie M. Silvers, Daniels' Variety Store, Radford, Va.

N. L. Wilson, J. O. Wilson, Wilson's Electric, Martinsville, Va.
 M. Rivers, Tick Tock Shop, Arlington, Va.
 O. J. Leombruno, Guarantee Barber Supply Co., Inc., Norfolk, Va.
 Zachary Taylor, Camera Center, Charlottesville, Va.
 H. C. Swing, Swing Electrical Co., Hampton, Va.
 Charles A. Garden, Jr., Kenbridge Hardware & Farm Equipment Co., Kenbridge, Va.
 Albert C. Roberts, Roberts Photo Engravers, Roanoke, Va.
 Henry D. Robinson, Orange, Va.
 I. H. Baker, Jr., Baker & Co., Norfolk, Va.
 John M. Bierer, Lexington, Va.
 Charles W. Rees, treasurer, J. Ed. Deaver & Sons, Inc., Lexington, Va.
 E. A. Sexton, Days Construction Co., Inc., Salem, Va.
 A. L. Holloway, Holloway & Kiger, Inc., Norfolk, Va.
 Bertha Lea Temple, president, Norfolk Wholesale Floral Corp., Norfolk, Va.
 A. W. Buhrman, Jr., Buhrman & Sons, Inc., Richmond, Va.
 Glen Shomo, Harrisonburg, Va.
 Walter Lee Cross, Ashland, Va.
 J. H. Sullender, Peoples Drug Store, Strasburg, Va.
 Joseph Copley, Carroll V. Shreve & Sons, Falls Church, Va.
 Robley J. Fletcher, Donald F. Fletcher & Son, Horsey, Va.
 James T. Fuller, president, Fuller Electric Service, Arlington, Va.
 Karl A. Kalber, Marion Mold & Tool Co., Marion, Va.
 Joe C. Shaner, Jr., Lexington, Va.
 Joseph W. Hill, Martinsville, Va.
 T. Edward Mears, Oak Hill, Va.
 Granville, C. Northam, Peninsula Gas Co., Onancock, Va.
 John C. Wood, Jr., Campostella Electronics Co., Norfolk, Va.
 James T. Backus, president, Triad Corp., Vienna, Va.
 D. H. Walker, Pearisburg, Va.
 J. Irvine Jones, the H. S. Jones Co., Clifton Forge, Va.
 H. M. Sparger, Echols-Sparger & Associates, Marion, Va.
 Gertrude M. Hatcher, president, A. A. McAllister & Sons' Co., Inc., Covington, Va.
 Mrs. A. A. McClung, Andre Studio, Lexington, Va.
 H. E. Young, Young Equipment, Inc., Orange, Va.
 J. M. Anthony, J. M. Anthony Insurance Agency, Bassett, Va.
 John S. Tyng, Charlottesville, Va.
 Richard M. Bagley, president, Bagley's, Newport News, Va.
 Leonard A. Boyd, president, Boyd Ford Sales, Inc., Middleburg, Va.
 R. Veltri, Beaconsdale Garage, Newport News, Va.
 Donald L. Liverman, Liverman Roofing Co., Chesapeake, Va.
 Ernest W. Ammons, Tappahannock Home Laundry & Dry Cleaners, Tappahannock, Va.
 Clarabelle Hopkins, D. C., Waynesboro, Va.
 E. F. Seawell, Jr., Gloucester Home Improvement Co., White Marsh, Va.
 Charles R. Lambert, Jeffreys-Lambert Hardware Co., Inc., South Hill, Va.
 Mrs. Hazel P. Payne, Orange, Va.
 James E. Steger, the Steger Pharmacy, Inc., Covington, Va.
 Floyd T. Deary, Sr., Floyd T. Deary Co., London Bridge, Va.
 Charles S. Mason, Barr's Pharmacy, Virginia Beach, Va.
 J. H. Schertle, Schertle TV & Appliances, Inc., Newport News, Va.
 John D. Norfleet, Great Bridge Farms Exchange, Norfolk, Va.
 Robert W. Strosnider, Strosnider Realty Co., Winchester, Va.
 M. L. Justice, Shuber & Justice, Inc., Manassas, Va.
 Maurice O. Beck, secretary, N. B. Goodwyn & Sons, Chesterfield Court House, Va.
 Irby S. Williams, president, Williams Department Store, Inc., Blackstone, Va.
 Clyde F. Tritt, Lebanon Auto Supply, Lebanon, Va.
 J. Mack Fraley, Cleveland Hardware & Furniture Co., Cleveland, Va.
 James D. Fralin, J. H. Fralin & Son, Roanoke, Va.
 Merle W. Eshleman, M.D., Harrisonburg, Va.
 J. Gaines Thomas, Thomas' Drug Store, Gate City, Va.
 E. W. Sanford, Jr., executive vice president, the First National Bank, Farmville, Va.
 George M. Ladd, Sperryville, Va.
 M. Watson, Suffolk Woodworking Co., Suffolk, Va.
 J. D. Hudson, Hudson-Perkins Electric Co., Richmond, Va.

- Harold D. Pugh, Filter Queen of Virginia, Norfolk, Va.
 George S. Bailey, president, Motor Specialty Co., Charlottesville, Va.
 Charles H. Dick, Miller & Anderson, Winchester, Va.
 William A. Barber, president, Barber's Auto Service, Inc., Alexandria, Va.
 David E. Laird, Laird's Nurseries, Richmond, Va.
 J. Peyton Moore, secretary, Southern Parts & Bearing Co., Inc., Lynchburg, Va.
 Reginald Q. Phelps and Cornelius Brooks, Phelps & Brooks Auto Service, Lynchburg, Va.
 E. Carroll Smith, Parkway Motel, Appomattox, Va.
 W. H. Pleasants, Vartersville, Va.
 Earl F. Brywood, Falls Church, Va.
 Jack G. Swanson, Winchester, Va.
 W. G. Stoneman, B. & L. Chevrolet Co., Inc., Hillsville, Va.
 Hubert H. Hartsock, Coeburn Automotive, Coeburn, Va.
 L. L. Peters, president, L. L. Peters, Inc., Roanoke, Va.
 Herman L. Wright, president, Wright Coal & Oil Co., Inc., Norfolk, Va.
 Shirley H. Holgate, Dam Neck Oil Co., London Bridge, Va.
 George B. Jennings, Jennings-Shepherd Co., Roanoke, Va.
 James L. Poppa, V. H. Poppa Stone Manufacturing, Petersburg, Va.
 Joseph E. Jones, Jones Auto Service, Inc., Richmond, Va.
 Raymond L. Hanback, Jr., president, H. & A. Printing Co., Inc., Arlington, Va.
 James K. Moles, Roanoke, Va.
 George E. Hadeed, George's General Store & Motel, Centreville, Va.
 P. S. Peach, president, Blackwell Construction Co., Merrifield, Va.
 Arlin P. Martin, A. P. Martin, Inc., Alexandria, Va.
 Richard L. McCreight, secretary-treasurer, Allen Glass Co., Inc., Alexandria, Va.
 W. H. Owen, president, Owen Pattern, Foundry & Manufacturing Co., Inc., Norfolk, Va.
 W. A. Cox, Cox Cleaners, Inc., Kilmarnock, Va.
 Karl P. Crowder, president, Old Dominion Casket & Supply Co., Petersburg, Va.
 Wayne M. Whitlow, president, Wayne Insulation Co., Inc., Alexandria, Va.
 Mrs. Mary S. Martin, Suffolk, Va.
 T. R. Hobbs, Bristol, Va.
 Mrs. Steve Steinbinder, Steve's Pink House, Danville, Va.
 Wesley A. Dunbar, Friendly Shop, Richmond, Va.
 George S. Sieg, Sieg & Lewis, Inc., Charlottesville, Va.
 H. W. Dominick, Jr., president, Dominick Chevrolet Corp., Charlottesville, Va.
 O. F. Foley, Harrisonburg, Va.
 John O. W. Gravely III, editor and publisher, the Virginia Gazette, Williamsburg, Va.
 Clyde M. Wiltshire, Jr., Wiltshire Insurance Agency, Highland Springs, Va.
 Ivey Holland, J. E. Sears & Co., Inc., Appomattox, Va.
 Harold H. Woodburg, Woodbury Radio & T. V. Shop, Pearisburg, Va.
 Robert S. Bloxom, Bloxom Auto Supply Co., Inc., Mapps ville, Va.
 Robert Grille, Falls Church, Va.
 Edwin G. Hutchings, the Wishing Well, White Post, Va.
 Ralph Cline, Frank Cline & Son, Inc., Harrisonburg, Va.
 William H. Grim, Frank Grim & Sons, Staunton, Va.
 Foy J. Howard, Pulaski Laundry & Drycleaners, Pulaski, Va.
 John A. Hall, Roanoke, Va.
 Robert M. Dunville, president, Robt. M. Dunville & Bros., Inc., Richmond, Va.
 Charles A. Hulcher, Hampton, Va.
 Jim Butcher, manager, Winchester SERVISOFT, Winchester, Va.
 R. D. Apperson, R. D. Apperson, Inc., Lynchburg, Va.
 A. L. Walker, Centerville Garage, Shackelfords, Va.
 Castle H. Page, Thompson Agency, Christiansburg, Va.
 B. J. Knight, president, Knight Moving & Storage Co., Lynchburg, Va.
 Louis A. Tucker, president, Emporia Office Supply Co., Inc., Emporia, Va.
 I. D. Early, secretary-treasurer, Early Equipment Co., Harrisonburg, Va.
 Harold C. Wright, Wright Equipment Co., Abdingdon, Va.
 G. A. Hartless, Chestnut Hill Esso Servicenter, Lynchburg, Va.
 Gordon S. Keith, vice president, Oil Equipment Sales & Service Co., Inc., Chesapeake, Va.
 Reid T. Putney, Dover Forestry, Inc., Manakin, Va.
 David Coville, president, Davino Electronic Services, Inc., Springfield, Va.
 Robert L. Davis, president, Southeastern Plastics, Inc., Portsmouth, Va.

P. W. Malpass Construction Co., Inc., Norfolk, Va.
 Warren E. Lahman, Lahman's Radiator Shop, Dayton, Va.
 Willis P. Garber, Rock-A-Teria, Timberville, Va.
 Willis Howard Moore, Crewe, Va.
 C. E. Vassar, Vassar's, South Hill, Va.
 J. R. Crane, Crane Plumbing & Heating Co., Danville, Va.
 William L. Stone, M.D., Arlington, Va.
 J. E. Patton, Ready-Mix Concrete Co., Galax, Va.
 Lem Bryant, Bryant Electric Co., Homewood, Ala.
 Frederick M. Smith, CES Construction Co., Mobile, Ala.
 S. F. Cawthon, assistant vice president, American National Bank & Trust Co. of Mobile, Chickasaw, Ala.
 Paul B. Whitehurst, Jr., Sylacauga, Ala.
 Jack A. Gunter, Gunter Insurance & Real Estate Agency, Phenix City, Ala.
 W. E. Nugent, Economy Auto Associate Store, Opelika, Ala.
 Catherine R. Barranco, Bessemer, Ala.
 Henry W. Steindorff, Jr., Air Comfort Engineers, Inc., Montgomery, Ala.
 James F. Luquire, Luquire Heating & Air Conditioning Co., Inc., Montgomery, Ala.
 Leonard J. Weil, vice president, Mayer Electric Supply Co., Inc., Birmingham, Ala.
 Ellen Dougherty, Frank G. Smithson, Charles O. Rorke, Lloyd Glenn, L. J. Smithson, Oleta Bagwell, Concrete Products & Roofing Co., Birmingham, Ala.
 C. D. Brownell, president, National Association Plumbing-Heating-Cooling Contractors, Washington, D.C.
 Moe Silverstein, president, Brooklyn, N.Y.; Sam P. Ainslie, executive secretary, Binghamton, N.Y.; Nicholas T. Shelton, secretary, Long Island, N.Y.; New York State Association of Plumbing-Heating-Cooling Contractors.
 John Biccieri, chairman of the board, Irving Abramson, executive secretary, Joint Plumbing Industry Board of Brooklyn and Queens, N.Y.
 Leonard X. Farbman, chairman of the board, Gene Murray, administrator, Harold J. Kearns, executive secretary, Joint Plumbing Industry Board of New York.
 M. E. Cosby, Clarence Cosby, Inc., Richmond, Va.
 E. V. McLauchlan, Richmond, Va.

Senator Sparkman furnished for the record the following list of persons who have communicated with him in regard to S. 757. These communications have been brought to the attention of the committee.

In support:

J. N. Stallins, Montgomery, Ala.
 R. H. Pearson, president, Air Rentals, Inc., Denver, Colo.
 Frazier H. Pair, Montgomery, Ala.
 C. Richard Lambdin, Montgomery, Ala.
 C. W. Ames, vice president, Missouri Valley Machinery Co., Omaha, Nebr.

In opposition:

Grady Rearden, Opelika, Ala.
 George A. Devendorf, president, Opelika Concrete Products, Opelika, Ala.
 C. D. Babcock, Capital Gas Co., Inc., Montgomery, Ala.
 J. P. Waddell, Decatur Electric Motor Service, Decatur, Ala.
 James L. Forman, Lincoln National Life Insurance Co., Springville, Ala.
 Mrs. Ida Goza, Bonnie Mills, Fort Payne, Ala.
 George W. Davis, Davis Service Station, Cherokee, Ala.
 L. D. Linden, Linden Hardware & Supply Co., Robertsedale, Ala.
 Mrs. Lee Marks, Dixie Mayonnaise Co., Sheffield, Ala.
 D. H. Hammond, Hammond Plumbing & Heat Co., Montgomery, Ala.
 J. B. McDonough, Jr., McDonough Bros., Prichard, Ala.
 Leonard X. Farbman, Gene Murray, Harold J. Kearns, Chicago, Ill.
 C. D. Brownell, president, National Association PHC Contractors, Chicago, Ill.
 Moe Silverstein, president; Sam P. Ainslie, executive secretary; Nicholas T. Shelton, secretary; New York State Association of Plumbing, Heating, Cooling Contractors

Pete Killgore, Sheffield, Ala.
 Virgil C. Adams, Adams McCargo Motor Co., Anniston, Ala.
 Leslie Edwards, Jr., Edwards Cigar & Tobacco Co., Anniston, Ala.
 Ben C. Brooks, Southern Building Supply, Montgomery, Ala.
 B. Ray Moore, Moore Automotive Service, Montgomery, Ala.
 J. B. Farley, Siluria Drug Co., Birmingham, Ala.
 Bill O'Brien, Southern Jack Co., Inc., Birmingham, Ala.
 Louis F. Adams, Amco, Inc., Montgomery, Ala.
 Arthur W. Smith, Amco, Inc., Montgomery, Ala.
 W. L. Noll, Jr., Amco, Inc., Montgomery, Ala.
 C. P. Robbins, Montgomery, Ala.
 T. M. Stansell, Birmingham, Ala.
 Winston O. Haas, Haas-Davis Packing Co., Inc., Mobile, Ala.
 George Baker, Mobile, Ala.
 Dwight Jones, Jones Hospital Pharmacy, Huntsville, Ala.
 Lester Thagard, Jr., Thagard & Mallette Drug Co., Andalusia, Ala.
 Pete C. Black, Troy, Ala.
 Ira Davis, Springville, Ala.
 J. H. W. Belcher, Ozark, Ala.
 H. H. Hastings, Jr., Troy, Ala.
 C. J. Jenkins, Opelika, Ala.
 W. L. Hacker, Guntersville, Ala.
 W. C. Chambers, Chambers Lumber Co., Athens, Ala.
 Wm. O'Neal, Huntsville TV Cable, Inc., Huntsville, Ala.
 Richard Gibian, American Candy Manufacturing Co., Selma, Ala.
 J. M. Caston, IGA Supermarket, Selma, Ala.
 V. E. Wyatt, Wyatt Drug Co., Thorsby, Ala.
 Virgil H. Coker, Virgil Coker Tire Service, Anniston, Ala.
 Perry W. Evans, Wilmer, Ala.
 Fred L. Smith, Fred's One Stop Service, Trinity, Ala.
 William E. Scott, Scott Hardware & Supply Co., Alexander City, Ala.
 Herman L. Turner, Sr., Turner Tire Service, Opelika, Ala.
 J. M. Stammer, Ensley, Ala.
 E. S. McKenzie, Mack's Market, Mount Olive, Ala.
 Mrs. Ruby F. Wilson, the Blossom Shoppe, Tuscaloosa, Ala.
 H. H. Stanley, Atomic Exterminators of Alabama, Opp, Ala.
 William V. Williams, Farm Supply Co., Greenville, Ala.
 Robert R. Davis, Atmore, Ala.
 J. L. Alley, general manager, Lowry Premier Corp., Birmingham, Ala.
 Robert D. Wilkinson, Jr., Splendid Cafe, Selma, Ala.
 Dan Harlan, manager, Albo Gas Co., Inc., Mobile, Ala.
 Wilton Sturges, Jr., Wilton Sturges & Co., Dothan, Ala.
 V. W. Paschel, Paschal's Dairy, Enterprise, Ala.
 Robert J. Zimlich, Mobile, Ala.
 B. M. Picard, Sam Picard & Sons, Ensley, Ala.
 Emmett H. Kincaid, Avenue G Service Station, Birmingham, Ala.
 Joe S. Reese, Jr., Alexander City, Ala.
 Andy J. Thurman, Thugrman's Accessory Store, Gadsden, Ala.
 A. J. Oliver, Oliver's Barber Shop, Mount Vernon, Ala.
 W. J. Strickland, Eight Mile Paint & Body Works, Eight Mile, Ala.
 Elam Holley, Selma, Ala.
 E. W. Buchanan, Elizabeth's Inc., Sheffield, Ala.
 Elvin Howell, Jr., Decatur Street Florist, Montgomery, Ala.
 A. F. Hamburg, H. M. Hamburg & Sons, Inc., Foley, Ala.
 R. W. Coward, the Fly Ash Arrestor Corp., Birmingham, Ala.
 W. L. (Polly) McCutcheon, Hartselle, Ala.
 V. C. McNamee, Schwacha Machine Shop, Brighton, Ala.
 Joe H. Flynn, Flynn's Farm Store, Rutledge, Ala.
 Peyton Starr, Peyton's Auto Service, Opelika, Ala.
 Mrs. Vivian T. Mock, Mock Distributing Co., Inc., Decatur, Ala.
 P. R. Pettis, Western Auto Associate Store, Fort Payne, Ala.
 H. S. Preston, Western Auto Associate Store, Lafayette, Ala.
 N. S. Hatcher, N. S. Hatcher Co., Sheffield, Ala.
 R. W. Ellis, Ellis Litho Co., Montgomery, Ala.
 W. A. Crutchfield, Crutchfield Auto Service, Montgomery, Ala.
 D. L. Mayson, Tri-City Chamber of Commerce, Flomaton, Ala.

Wayne Chancy, Dixie LP Gas Co., Inc., Union Springs, Ala.
 W. J. Rountree, Rountree Radio & TV Shop, Troy, Ala.
 Mrs. Delores A. Maddox, Maddox Variety Store, Tallassee, Ala.
 D. W. Walker, Nelson Machine Co., Gadsden, Ala.
 R. Vaughn Nichols, Nichols Standard Station, Marion, Ala.
 Powell Brewton, Brewton Materials, Inc., Dothan, Ala.
 J. R. Dozier, president, Washburn Cigar Co., Inc., Montgomery, Ala.
 L. A. Hood, Hood's General Merchandise, Oneonta, Ala.
 Hugh Stevenson, Stevenson Insurance & Realty Agency, Roanoke, Ala.
 Charles S. Sullivan, Camp Hill Lumber Co., Inc., Camp Hill, Ala.
 T. W. Green, Central Gulf Service Station, Mobile, Ala.
 M. T. Portis, Burkville, Ala.
 Joe Long, Joe Long's Grocery, Summerdale, Ala.
 Reynolds L. Lurwig, Guntersville Sheet Metal Works, Guntersville, Ala.
 R. Frank Williams, Avondale Supply Co., Inc., Birmingham, Ala.
 J. D. Beauchamp, Beauchamp Paint & Glass Co., Dothan, Ala.
 R. G. Galbreath, Auto & Electric Supply Co., Springville, Ala.
 G. T. Mosteller, Jr., president, Radio Distributing & Supply Co., Inc., Anniston, Ala.
 Jack Graves, president, National Cabinet Corp., Springville, Ala.
 J. B. Wold, executive vice president, the Fly Ash Arrestor Corp., Birmingham, Ala.
 L. L. Dees, Dees & Finklea Realty Co., Monroeville, Ala.
 Wade F. Mixson, Mixson Furniture Co., Enterprise, Ala.
 T. R. Norris, Montgomery, Ala.
 Eugene Sims, D.D.S., Montgomery, Ala.
 B. O. Griffin, Linden Tire & Recapping Co., Linden, Ala.
 T. W. Eisenman, Eisenman & Elliott, Columbus, Ohio.
 Joseph Skilken, Joseph Skilken & Co., Columbus, Ohio.

(Senator Neuberger has received a total of 233 messages on S. 757. Of this number 5 were in favor, 225 were opposed, and 3 were non-committal.)

(The following material was ordered to be inserted in the record:)

ECONOMY FORMS CORP.,
 Des Moines, Iowa, April 24, 1963.

Hon. BOURKE HICKENLOOPER,
 U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SIR: We are writing in regard to the proposed amendments to the Small Business Act. As suppliers to contractors and builders, we feel that eliminating the set-aside program for small business concerns on Government construction contracts will restore free and competitive bidding for all contractors on an equal basis and be to the best interests of all contractors and suppliers such as ourselves, as well as to the best interests of the taxpayer.

We respectfully urge that you attempt to secure committee hearings on S. 727 so that it may come before you for a vote and trust that you will see fit to vote for this bill when it is presented to you.

Respectfully,

H. W. CRIST.

[Telegram]

BIRMINGHAM, ALA., May 6, 1963.

Hon. JOHN SPARKMAN,
 U.S. Senate, Washington, D.C.:

The officers and members of our organization ask that you oppose and use your influence in opposition of Senate bill 757. Purpose of this bill is to destroy the Small Business Administration's construction set-aside program. This would be a detriment to many of the fine contractors and subcontractors in our State who are able to obtain work through the efforts of the SBA's present program. Please keep us informed.

GLEN L. DELONG,
 Executive Secretary, Associated Plumbing, Heating, Cooling Contractors
 of Alabama.

[Telegram]

RICHMOND, VA., May 6, 1963.

HON. A. WILLIS ROBERTSON,
Senate Chairman, Banking and Currency Committee, Senate Office Building,
Washington, D.C.:

The more than 1,000 licensed plumbing contractors from Virginia urge you to put your personal efforts behind the continuance of the Small Business Administration's construction set-aside program currently being reviewed by your committee in conjunction with Senate bill 757.

CLIFF D. ELLSWORTH,
President, Virginia Plumbing & Mechanical Contractors Association.

INTERNATIONAL UNION OF OPERATING ENGINEERS,
Washington, D.C., May 10, 1963.

HON. WILLIAM PROXMIRE,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: With reference to hearings now being conducted upon S. 757, I am enclosing herewith copy of a letter from our local union No. 49, which will give you some further idea of how the set-aside program of the Small Business Administration is affecting our union, its members, and the citizens who are employed on construction work under union contracts. It will be very much appreciated if you will include this letter in the record of the hearings.

The materials and further information which you, and members of your committee, requested on May 8, will be furnished to you within the next few days. I am in the process of compiling this information and feel certain that I should be able to have it in your hands early next week.

Thanking you and your committee for the interest displayed in this matter, I am,

Sincerely yours,

PAUL A. ASKEW,
Assistant to the General President.

INTERNATIONAL UNION OF OPERATING ENGINEERS,
Pierre, S. Dak., May 6, 1963.

MR. FRANK HANLEY,
Assistant to the General President, International Union of Operating Engineers,
Washington, D.C.

DEAR SIR AND BROTHER: I am writing in reference to small business set-aside program on work being let in State of South Dakota at present time. Work of \$1 million volume or less, is set-aside for small business. Several jobs have been let recently that J. A. Tobin Construction Co., Inc., and Western Contracting Corp., could not bid because they could not comply as small business. These jobs were therefore let to nonunion contractors and we have no members able to secure employment on said projects.

One of these projects was timber clearing stage I, let in 1962, and timber clearing stage II let in 1963. Low bidder Vanderpol Construction, Geddes, S. Dak., for \$372,450. On this job Vanderpol sublet quite a lot of the work; to date they have had a man killed and another seriously hurt in 2 days' time on the subcontractors job. This we feel is a good example of an unqualified contractor and what we get from the set-aside program. Several more jobs are being let the 9th of May estimated at from \$700,000 to \$900,000 in connection with the Big Bend, Oahe, and Fort Randall Dams and Reservoir projects. J. A. Tobin would like to bid on these jobs. One is 5½ miles east of Pierre relocation of Chicago & North Western Railway; approximate value \$600,000. Another is for surfacing constructed service roads, dam vicinity near Pierre, Oahe Reservoir, approximate value \$700,000.

As long as we have a set-aside program for small business in construction our fair contractors are going to be discriminated against. Anything you can do will be appreciated. If I can be of further assistance please advise me.

Fraternally yours,

WAYNE E. AUSTIN,
Area Business Representative, Local No. 49.

[Telegram]

WHITEFIELD, N.H., May 7, 1963.

Senator THOMAS MCINTYRE,
Senate Banking and Currency Committee, Washington, D.C.:

We strongly oppose bill S. 757. It will deprive us of competing on small Government contracts.

J. P. FITZMORRIS, *President.*
 NEW HAMPSHIRE ASSOCIATION OF
 PLUMBING CONTRACTORS.

[Telegram]

LACONIA, N.H., May 7, 1963.

Hon. THOMAS J. MCINTYRE,
Senate Office Building,
Washington, D.C.:

I would appreciate your cooperation to oppose Senate bill S. 757 tomorrow. Present bill protects small contractors.

GEORGE A. FRANCOEUR.

CARON CONSTRUCTION Co., INC.,
Manchester, N.H., April 30, 1963.

Senator THOMAS MCINTYRE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Our firm would like to go on record as supporting bill S. 757 to exempt building construction from small business set-asides.

We would appreciate your support in regard to this bill.

Thank you very much.

Very truly yours,

ANATOLE A. CARON, Jr.

MANCHESTER, N.H., May 1, 1963.

TOM MCINTYRE,
Senate Office Building,
Washington, D.C.:

The Harvey Construction Co. is strongly in favor of supporting the bill S. 757 to exempt construction from small business set-asides.

PAUL H. HARVEY.

BLANCHARD STEBBINS, INC.,
Manchester, N.H., May 2, 1963.

Re S. 757.

Senator THOMAS MCINTYRE,
Senate Office Building,
Washington, D.C.

DEAR SIR: Please be assured that the general building contractors of New Hampshire strongly support any attempt to exclude construction work from SBA set-asides. During my term as president of the AGC of New Hampshire this same subject received unanimous support from the organization.

Generally such set-asides involve added costs to the Government and are easily circumvented. Within the State the vast majority of contractors would qualify to bid set-asides but shun the problems to both contractor and owner involved.

Your support of this bill would be greatly appreciated.

Yours truly,

HERBERT B. STEBBINS, *Treasurer.*

U.S. SENATE,
 COMMITTEE ON COMMERCE,
April 16, 1963.

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

DEAR CHAIRMAN ROBERTSON: I am enclosing for your information and that of the committee, a letter which I have received from a constituent

regarding S. 757 to exempt construction contracts from the small business set-aside program.

With best wishes, I am,
Sincerely yours,

E. L. BARTLETT.

FAIRBANKS, ALASKA,
April 5, 1963.

Hon. E. L. BARTLETT,
U.S. Senate,
Washington, D.C.

SIR: During the last session of Congress, bills aimed at exempting Government construction contracts from the set-aside program of the Small Business Act were introduced. Some of these bills were: S. 3096; H.R. 10518, H.R. 10863, H.R. 10754, H.R. 10846, H.R. 10806. None of such bills went to the floor of Congress for a vote before Congress adjourned.

The set-aside program for small business concerns on Government construction contracts continues to limit competitive bidding on a very large number of Government construction contracts. This practice of restricting competitive bidding is contrary to our free-enterprise system and materially increases the cost of Government construction work at the expense of all taxpayers. If taxes are to be reduced, costs certainly must also be reduced, and restoring free competitive bidding to Government construction work is certainly one way costs can and should be reduced.

I certainly urge you to do everything possible to see that bills similar to those introduced during the last session of Congress to exempt Government construction contracts from the small business set-aside program are promptly reintroduced and taken before Congress for a vote. Pending favorable action on bills aimed at exempting Government construction contracts from the small business set-aside program, I would hope you could take action to see that appropriation bills are amended to provide that any Government construction projects for which money is appropriated are not subject to the cost-increasing factors inherent in the small business set-aside program.

Thank you for your consideration of my views and suggestions.

Yours very truly,

C. L. CONGER.

PALMBERG CONSTRUCTION CO.,
Astoria, Oreg., April 19, 1963.

SENATE BANKING AND CURRENCY COMMITTEE,
Senate Building,
Washington, D.C.

GENTLEMEN: As a small contractor, until you take some action to free us from the regimentation and regulation of big unionism and allow us to operate in a truly competitive manner, we must stick to the position of being unalterably opposed to S. 757 and H.R. 2029 with respect to small business set-asides in construction; and we beg for your assistance in preserving our means of livelihood.

Very sincerely yours,

H. G. PALMBERG.

ARGUMENTS AGAINST S. 757 AND H.R. 2029 WHICH PROVIDE FOR REMOVAL OF SMALL BUSINESS CONSTRUCTION SET-ASIDE JOBS

The mergers go on and on—big unions and big business. Small businesses that are not fortunate enough to merge are faced with elimination. And all this because small employers cannot bargain with their own employees. The preservation of small businesses is necessary to curb the ever-increasing monopolies which are jeopardizing the economy of our Nation through big unions and big business.

The removal of construction set-aside jobs from the program of the Small Business Administration would accelerate the already high and constantly increasing rate of failures in the construction industry among small contractors unless you do something to permit the small contractor to compete in the construction industry. Every obstacle that arises in our path of survival as a small contractor reverts back to power and control exercised by big

unions through politics, propaganda, fear, and intimidation, not only on our workmen but on yourselves. Some of the reasons why a small contractor needs construction set-asides until he is allowed to compete without controls by big unions and big business are as follows:

1. The elimination of many small construction firms, including ourselves, is undoubtedly due to the labor agreements forced upon us by big unions, regardless of the desires of our own employees.

2. Union initiation fees (as with our employees of \$300 within 8 days, or within 31 days) are prohibitive and preclude equal employment opportunities, especially to the youth of our Nation (see Reader's Digest article, January 1963 "Why Johnny Can't Get a Job" for further enlightenment).

3. If fringe benefit payments, presently being considered for inclusion in Federal contracts through revision of the Bacon-Davis Act, are to be contractually forced on small contractors, we might as well discriminate completely against nonunionism.

4. One of our most disgusting functions is to agree to and post a nondiscrimination clause pertaining to race, etc.; then refuse to hire white men because they don't want to or can't afford to join a union.

5. No apprenticeship is permitted in the operating engineers union with which we have dealt; this, together with other union regulations, leaves us with virtually no control over our employees by which we can encourage or compel them to learn and produce. How is the United States ever to get skilled workmen without reward or competition?

6. Workmen are being forced into "serfdom" through big unionism. They must be obedient to the union or they are subject to fine or to no job reassignment; their initiation fees and dues are such that they can hardly afford to belong to more than one union; if their membership is dropped, they are subject to loss of pensions and other benefits that had been accumulated; and they live and work in fear of reprisals from union dictators. Let's let the small contractor work together with his own employees when there is a mutual desire to do this without outside intervention.

7. In addition to no apprenticeship training program, the monopoly of international unionism forces the small contractor to pay the same wages on his small equipment as the big contractor pays on his large equipment; in addition to this, the small contractor is also compelled to have the same size crew on small equipment as on big equipment—so what chance has a small contractor?

8. Featherbedding, that vicious and destructive product of unionism, is a form of legal welfare which only the big monopolistic corporations can survive for any extended length of time. What chance has a small contractor to survive against this?

9. Union hiring halls invariably dispatch the poorest workmen to small contractors, and this is just as unfair to the incompetent workmen as it is to the small contractor. This sort of inequality is worse than socialism.

10. Union featherbedding is frequently forced under the guise of safety. Why should this be permitted when State industrial accident commissions and Federal agencies all have safety regulations governing contractors? And why should a workman worry about safety, particularly in his attitude toward his fellow workmen, when they are both covered by health and welfare and by State industrial accident commission payments and need suffer no penalty nor reprisal from being unsafe because they have union protections?

11. As a small contractor, we usually cannot get skilled or even good workmen through the union hiring hall, and we then employ untrained youth at full union scales and endeavor to train them to do a job. The better ones are soon working for the big contractors because of assignments and longer duration jobs. The small contractors have paid to train these men, but do not reap the benefits.

12. The Associated General Contractors of America does not fairly represent its small contractors because its practice is to negotiate all-inclusive labor agreements with the big unions and then insist that these agreements be applied to all small contractors.

13. Why do minimum wage determinations for an area always follow territorial union agreements? The wages for any given area should nearly always average less than provided in these agreements. If this condition could be met, it would provide some aid for small contractors fortunate to have his own employee union; it would also aid workmen or small contractors who might wish to work on a nonunion basis.

14. Many Associated General Contractors members today follow the unethical and illegal practices of operating through subsidiary companies, which are not members of AGC and which operate nonunion, for the simple purposes of taking set-aside jobs for which they would otherwise not qualify and for operating outside of the union agreements negotiated through their AGC organization. All of this is legal and necessary to some extent, but it certainly puts the AGC in the position of sponsoring by the practices of many of its members the growing list of failures in the construction industry about which the AGC expresses such concern.

SULLIVAN, LONG & HAGERTY,
Birmingham, Ala., March 18, 1963.

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

DEAR SENATOR PROXMIRE: If there is a sincere desire to effect economy in Federal Government spending, we would suggest that the limiting of competition in bidding on Federal construction projects be thoroughly investigated and curbed. Our observation of the small business set-aside program, as practiced at Redstone Arsenal in Huntsville, Ala., indicates that the limiting of prospective bidders on projects ranging from \$3,500,000 to \$5 million in size, to those companies designated as small business firms, results in higher contract costs to the Government.

An instance of this is the recent bid on the booster service systems on which the bids were as follows:

1. Grafe-Wallace-----	\$3,327,118
2. Pearce & Gresham-----	3,382,037
3. Algernon Blair-----	3,399,859

It is our understanding that Grafe-Wallace has been disqualified as being a large business concern and the project is being awarded to Pearce & Gresham at a premium over the low bid of \$54,919.

There is no way to estimate the amount of money which might be saved, nationwide, if competition on all projects above \$500,000 were opened to competitive bidding from all qualified contractors rather than restricted to a select few.

Yours very truly,

JOSEPH L. COBB, *Executive Vice President.*

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,
CAROLINAS BRANCH,
Charlotte, N.C., May 13, 1963.

Senator WILLIAM PROXMIRE,
Chairman, Small Business Subcommittee of the Senate Committee on Banking and Currency, Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: We would greatly appreciate having the following statement entered into the official record of subcommittee hearings on the bill, S. 757, which would eliminate construction from the Small Business Administration's set-aside program.

Carolinas Branch, AGC represents 378 general contractor members who perform about 85 percent of the dollar volume of commercial and industrial construction in the two Carolinas. At the current time, approximately 10 of our contractor members do not qualify as small business concerns under Small Business Administration criteria. Of this number, five are primarily highway contractors whose work is not included in the set-aside program.

At a meeting of Carolinas Branch, AGC Board of Directors held in Columbia, S.C., on June 29, 1962, the official position of our association on the SBA set-aside program was unanimously agreed upon. This policy statement reads as follows: "Carolinas Branch, AGC is unalterably opposed to small business set-asides in the construction industry and wholeheartedly endorses the position of the national AGC with regard to SBA. Such regulations are not in the public interest and violate the historic tradition of the construction in-

dustry requiring award of construction contracts to the lowest responsible bidder after competitive bidding."

Your favorable consideration of this request is earnestly solicited.

Very truly yours,

HENRY J. PIERCE, *Managing Director.*

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
San Mateo, Calif., May 15, 1963.

Re set-asides program.

Hon. WILLIAM PROXMIRE,

Chairman, Subcommittee on Small Business, Senate Banking and Currency Committee, Senate Office Building, Washington, D.C.

MY DEAR SENATOR: At the time of my appearance before your committee on May 7, you put the question to me as to the number of our members that supported or opposed our stand on the above subject. I answered in detail the questions you put to me with reference to those opposed. I have now been advised by our head office at San Mateo, Calif., with reference to the support:

"Noted transcript of questions to you by Senator Proxmire during hearings on set-asides, particularly as to number of letters favoring our stand. Can you advise him that when we wrote to district chairman about this, asking them to contact Representative Patman of House Banking, there was a tremendous outpouring in support?"

You can make this part of the record of the hearings.

Sincerely yours,

GEORGE J. BURGER,
Vice President.

OREGON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL,
Eugene, Oreg., May 22, 1963.

Hon. MAURINE B. NEUBERGER,

*Senate Office Building,
Washington, D.C.*

DEAR SENATOR NEUBERGER: In regard to the resolutions passed at our March convention in Klamath Falls concerning the Small Business Administrator set-aside program and commending John Horne, Administrator, please be advised that the contents of both resolutions were factual information at the time they passed the Alaska State Labor Convention in the fall of 1962, and on the advice of some of our international representatives they were passed on to us with the request that we concur or pass similar resolutions.

Developments in this fast-moving situation have completely changed our attitude on the Small Business Administration set-aside program and the executive council of the AFL-CIO in its winter meeting in Miami have considered this program on its merits and were obliged to oppose it. However, no top official of the AFL-CIO was in attendance at our convention to advise us of this action, and not being informed otherwise, the delegates acted on the resolutions according to the knowledge of the Alaska convention and there was no objection expressed.

I have taken this matter up with the executive board of the State building trades and have been instructed to concur in the action of the AFL-CIO executive council and also the national building and construction trades department. We therefore urge you to support the position of our department and Mr. Neil Haggerty in the pending legislation on this set-aside program.

We have made several attempts to reach you by phone in hopes that our Oregon director of political education, Mr. George Brown, and myself could explain this somewhat unusual situation concerning our convention action. Experience has glaringly pointed out to us that we cannot give assistance to so-called small business because all too often today it is infested with nonunion and even antiunion elements who in exchange for our support and good will would destroy the hard-won conditions and wage structure. Your understanding and support will be greatly appreciated.

With best personal regards,

Sincerely,

JOE L. WILLIS, *Secretary.*

[Telegram]

MAY 22, 1963.

JOHN E. HORNE,
Administrator, Small Business Administration,
Washington, D.C.:

Understand Senate Banking Committee is holding hearing on S. 757. In my opinion any law passed that sets a pattern for killing off program that helps small business get a share of Government purchases would materially injure small business of the Nation. Any help that you can give will be appreciated.

PETE C. BLACK.

TROY, ALA.

NATIONAL AUTOMATIC SPRINKLER AND FIRE CONTROL ASSOCIATION, INC.,
New York, N.Y., June 12, 1963.

Re Small Business Administration, construction set-asides.

Senator A. WILLIS ROBERTSON,
Chairman, Senate Banking and Currency Committee, Senate Office Building,
Washington, D.C.

DEAR SENATOR ROBERTSON: The original intent of the Congress at the time the Small Business Administration was established was to protect manufacturing industries.

Subsequently, the contracting industry became involved under the administrative jurisdiction of the Small Business Administration.

In the beginning, contracts in the order of \$50,000 or below were set aside to be bid separately by contractors who fell within the definition of "small business."

The administrative practices of the Small Business Administration have led to some abuses insofar as the construction industry is concerned. The present practice of setting aside construction contracts of \$500,000 and under militates against older, well-established, well-capitalized companies staffed by competent and trained personnel from the legitimate construction industry. In effect, the present set-aside procedures help companies which are often unequipped in training, personnel, management techniques, financial background, know-how and fabrication facilities. Present practices preclude older, larger, and more competent companies from bidding contracts on Government facilities.

Insofar as automatic sprinkler contracts are concerned, a contract for \$500,000 or more is extremely unusual.

We, therefore, wish to indicate our support of Senate bill 757 which would 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."

Cordially yours,

RAYMOND J. CASEY, *Executive Director.*

WHITE HOUSE COMMITTEE ON SMALL BUSINESS,
Washington, D.C., June 28, 1963.

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

DEAR MR. CHAIRMAN: As you know, the White House Committee on Small Business was appointed to help coordinate the Government's efforts to foster and encourage small business enterprise. The Committee is composed of representatives of those departments and agencies most conversant with the problems of the small business community. For your information, I am attaching a list of the members of the Committee.

When he appointed the Committee, one of the tasks which the President set for the members was to explore "means for assuring small business a larger share of Government contracts and subcontracts." In that regard, the Committee last year examined the set-aside program and found it to be a useful tool in fulfilling congressional policy. In our continuing consideration of the impact of proposed legislation on small business, we have recently expanded our initial perusal of the set-aside program to include an examination of S. 757, the bill to repeal the

program as it pertains to Federal contracts for maintenance, construction, and repair. The Committee unanimously opposes the bill.

Since the attached position paper had not been formulated at the time I appeared before the Small Business Subcommittee in opposition to S. 757, I am taking the liberty of forwarding it to you in this manner. I believe it contains cogent arguments against passage of the bill.

If I can be of further service, please do not hesitate to inform me.

With kind regards, I am,

Sincerely,

JOHN E. HORNE,

Chairman, White House Committee on Small Business.

Enclosures :

MEMBERSHIP

John E. Horne, Chairman, Administrator, Small Business Administration.
 Robert V. Roosa, Under Secretary for Monetary Affairs, Department of the Treasury.
 Thomas D. Morris, Assistant Secretary (Installations and Logistics), Department of Defense.
 Lee Loevinger, Assistant Attorney General (Antitrust Division), Department of Justice.
 Eugene P. Foley, Deputy to the Secretary, Department of Commerce.
 James J. Reynolds, Assistant Secretary for Labor-Management Relations, Department of Labor.
 Charles L. Schultze, Assistant Director, Bureau of the Budget.
 Gardner Ackley, member, Council of Economic Advisers.
 Paul Rand Dixon, Chairman, Federal Trade Commission.
 Bernard L. Boutin, Administrator, General Services Administration.
 Milton P. Semer, General Counsel, Housing and Home Finance Agency.

POSITION PAPER WITH RESPECT TO THE ELIMINATION OF MAINTENANCE, REPAIR, AND CONSTRUCTION CONTRACTS FROM THE SMALL BUSINESS SET-ASIDE PROGRAM

The White House Committee on Small Business views with great concern the provisions of S. 757, 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 Committee supports and applauds the direct testimony made to the Senate Committee on Banking and Currency by the Department of Defense, the Small Business Administration, and the General Services Administration that enactment of the legislation would be extremely harmful to the overall program of the Government to assist small business and to the fulfillment of the congressional mandate that small business shall receive a fair share of all Government contracts.

The proposed legislation (S. 757) would eliminate the present authority in the Small Business Act of 1953 to make set-asides for small business where maintenance, repair, or construction contracts are involved. Prior to 1958, the Small Business Act did not contain a specific reference to "construction," and the question was raised as to whether construction work was intended to be included within the language of the act relating to "contracts for property and supplies." This question was expanded into a widespread belief that, in view of the absence of a reference in the statute to "construction," the set-aside authority did not extend to the Government's procurement of construction, maintenance, and repair services. To resolve any doubt as to the applicability of the set-aside program under the statute to construction procurement, the Congress amended the Small Business Act on July 18, 1958 (Public Law 85-536), to provide specifically 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) * * *."

Since the enactment of the Small Business Act, the authority contained therein to set aside procurements for award solely to small business concerns has constituted a major and one of the most effective means of carrying out the policy of Congress that a fair proportion of Government contracts for supplies and services shall be awarded to small business concerns. In the opinion of the White House Committee, it is significant that the Congress subsequently amended the act, as above stated, to clearly indicate its intent that maintenance, repair, and construction contracts are to be set aside for small business. Any change

in the Small Business Act which would make the authorities in the act applicable to one class of small business concerns but not to another class of such concerns clearly would be inequitable and would impair the ability of Government-procuring agencies to comply with the general intent of Congress regarding small business. It is the considered opinion of the Committee that there is no reason or justification for making such a distinction. Furthermore, should such a distinction be made with respect to the construction industry, there would be nothing to prevent other special groups representing various segments of industry from demanding that set-asides be eliminated from Government procurement with respect to supplies and services with which they are concerned.

The Committee believes that the set-aside authority, as presently contained in the Small Business Act, is vitally helpful with respect to achieving the policy of the Congress and the President regarding assistance to small business. The availability of the set-aside authority provides invaluable assistance in connection with the Government's efforts to award a fair share of maintenance, repair, and construction contracts to small business concerns.

Based on the experience of the major Government procurement agencies, the Committee has found that small business concerns in the maintenance, repair, and construction industry are very competitive. It has found that where projects have been set aside for award exclusively to small business concerns, competition has been adequate to insure reasonable prices. The Committee has also found that a sufficient number of the small business concerns bidding on maintenance, repair, and construction set-asides are capable of qualifying as responsible bidders and are competent to meet required standards of Government procurement.

Applied, as it is, only in instances where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business firms so that contract awards will be made at reasonable prices, the full set-aside authority as is now presently contained in the Small Business Act is of major importance in achieving the policy of the Congress with respect to assisting small business. The Committee believes that any change in existing law which would preclude the application of set-aside authority to contracts involving maintenance, repair, or construction would militate against the achievement of this goal and would, therefore, be most undesirable. To accomplish this objective the Committee believes that full set-aside authority as presently provided in the Small Business Act must be retained and that the withdrawal or diminution of any portion of such authority would be contrary to this purpose.

For the foregoing reasons, the White House Committee on Small Business is opposed to the enactment of S. 757.

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