July 16, 2012

The Honorable Howard P. McKeon
Chairman
House Armed Services Committee
2120 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Adam Smith
Ranking Member
House Armed Services Committee
2120 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McKeon and Representative Smith,

We, the Associated General Contractors of America (AGC) representing 33,000 construction contractors—the majority of whom are small businesses consisting of 20 or fewer employees—strongly urge you to encourage the Department of Defense (“DOD” or “the Department”) to develop procedures for fully accounting for small business contracting participation at all tiers on a DOD contract, as mandated in the National Defense Authorization Act For Fiscal Year 2012 Committee Report. H. Rep. No. 112-78, 168 (2012). The House Armed Services Committee (HASC) requested this information by March 30, 2012, but has not received a written report from DOD to date.

To improve federal contracting opportunities for small businesses, understanding the full extent of small business participation in the federal government’s largest contracting entity, DOD, is essential. Within many types of construction projects, subcontractors perform a bulk of the work and often specialize in a specific expertise. Those subcontractors, in turn, also hire subcontractors who possess certain expertise to perform elements of the project. Under the current system, if an “other-than-small business” is included as a first-tier subcontractor, the prime contractor cannot report the flow of dollars to small businesses hired below the first-tier subcontractor.

This situation exists because the Federal Acquisition Regulation prevents contracting agencies from counting all elements of contracts performed by small businesses towards small business contracting goals. See FAR 52.219-9(l). As a result of this provision, prime contractors are often required to consider subcontractor choices for larger projects that are beyond the capacity—especially bonding capacity—of small businesses in an attempt to meet the various small business contracting goals. The present approach to counting small business participation adds additional risk to contracting because it puts pressure on small businesses to accept lead roles with larger firms operating under them in a way that is “upside down” and an unnatural alignment. This adds risk to large general contractors who are required to get the job done even if subcontractors default or fail to perform up to contract requirements.

The Small Business Administration’s recently released FY2011 small business procurement scorecards further underscore the need to better document and understand the actual amount of work the federal government does with small business. For example, in FY2011 DOD awarded $57.4 billion in contracts to small businesses, or 19.8 percent of eligible contract dollars; down from FY2010, when DOD spent $61.1 billion on small businesses, or
20.9 percent of eligible contract dollars. Additionally, the Department’s small business subcontracting numbers fell from 37.3 percent in FY2010 to 35.2 percent in FY2011. Counting lower tier small business procurement dollars will allow DOD to accurately account for small business participation and more comprehensively address contracting areas where small businesses are underrepresented. Fully counting actual small business participation will also help to avoid diminishing small business procurement participation levels, as we saw in FY2011.

The goal of small business contracting programs must be measured by the full counting of small business subcontracting at all tiers. This will more accurately show how the construction industry supports and is dependent upon small businesses. As such, we strongly believe the subcontracting accounting procedures HASC requested can further advance DOD small business contacting opportunities and urge the committee to encourage the production of those procedures as requested.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director
Government Affairs

CC: Representative Bill Shuster
    Representative Rick Larsen