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**AGC of America**  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
**Quality People. Quality Projects.**



August 14, 2012

The Honorable Carl Levin  
Chairman  
Senate Armed Services Committee  
228 Russell Senate Building  
Washington, DC 20510

The Honorable Mary L. Landrieu  
Chairman  
Senate Small Business & Entrepreneurship Committee  
428A Russell Senate Office Building  
Washington, DC 20510

The Honorable John McCain  
Ranking Member  
Senate Armed Services Committee  
228 Russell Senate Building  
Washington, DC 20510

The Honorable Olympia J. Snowe  
Ranking Member  
Senate Small Business & Entrepreneurship Committee  
428A Russell Senate Office Building  
Washington, DC 20510

Dear Senators,

On behalf of the Associated General Contractors of America (AGC), I strongly urge you to include small business contracting reforms as part of the National Defense Authorization Act for Fiscal Year 2013 (NDAA). Among those reforms, we urge you to consider counting small business participation at lower tiers towards the small business procurement goals and addressing the definition a “bundled contract,” (included in section 1671 of H.R. 4310) to include contracts for construction services.

AGC is the nation’s largest and oldest trade association of construction contractors, founded in 1918. The association’s 33,000 members include 7,000 of America’s leading general construction contractors and 26,000 specialty contractors and other firms, and a network of over 90 state and local chapters. More than 80 percent of AGC members are small businesses of 20 or fewer employees. AGC members are engaged in the construction of commercial buildings, factories, warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, and in-site preparation and utilities installation for housing developments.

Small business contracting reforms are germane to and should be included in NDAA. The NDAA provides essential funding authorization and policy for the U.S. Department of Defense (“DOD” or “the Department”). DOD accounts for approximately 70 percent of federal procurement spending per year<sup>1</sup>. Consequently, the Department is the largest contracting federal agency and pivotal to the federal government’s mission to expand small business contracting opportunities and to meet its small business procurement goals. In FY2011, DOD not only failed to meet its goals for prime and subcontractor small business awards, the percentages decreased in both categories from FY2010 levels.<sup>2</sup>

Providing meaningful reform to the small business procurement system can help DOD provide more small business contracting opportunities and more efficiently meet its goals. Two such meaningful reforms include: (1) counting small business participation at lower tiers towards the small business

<sup>1</sup> Kate M. Manuel, Competition in Federal Contracting: An Overview of the Legal Requirements. Congressional Research Service, 1-2 (June 30, 2011).

<sup>2</sup> FY 2011 Small Business Procurement Scorecard for Department of Defense. Small Business Administration. [http://www.sba.gov/sites/default/files/files/FY11%20Final%20Scorecard%20DOD\\_2012-06-29.pdf](http://www.sba.gov/sites/default/files/files/FY11%20Final%20Scorecard%20DOD_2012-06-29.pdf)

procurement goals; and (2) addressing the definition a “bundled contract” (in section 1671 of H.R. 4310) to include construction contracts.

Counting small businesses at lower tiers towards the small business procurement goals will allow DOD to understand the full extent of small business procurement participation and, in turn, address procurement areas where small business is underrepresented. Under the current system, if an “other than small business” is included as a first-tier subcontractor, the prime contractor cannot report the flow down dollars to small businesses hired below the first-tier subcontractor.<sup>3</sup> This happens regardless of whether small business subcontractors comprise other tiers or even the rest of the first-tier. The counting of lower tier small business subcontractors will more accurately show small business participation in DOD contracts and allow the Department to determine where more small business opportunities exist.

Including “construction services” as part of the definition of “bundled contract” would force DOD to simply justify its decision to not provide smaller contract awards and, as a result, prevent small businesses from having a full and fair opportunity to procure a DOD contract. Contract bundling is the process of consolidating contracts into a single, larger dollar amount contract. According to one report, federal spending through bundled contracts grew four percent in FY2011 to \$132.2 billion from \$127.2 billion in FY2010.<sup>4</sup> DOD was not immune to this trend. For example, the Army spent six percent more on bundled contracts in FY2011 than FY2010 even as its total contact spending declined.<sup>5</sup> Ensuring DOD agencies provide justifications for bundling construction services contracts will allow Congress and the Small Business Administration to more easily conduct oversight in this area and to ensure that DOD provides small business procurement opportunities where possible.

Many members of Congress often note the importance of including small businesses in the federal contracting arena. Ensuring those businesses have a full and fair opportunity to bid on contracts in the federal government’s largest procurement agency, DOD, is essential to their growth and viability in the current economy. Today, we strongly urge you to show your commitment to small business by taking action and including small business reforms in the NDAA.

Sincerely,



Jeff Shoaf  
Senior Executive Director  
Government Affairs

CC: Senate Armed Services Committee Members  
Senate Small Business & Entrepreneurship Committee Members

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<sup>3</sup> This situation exists because the Federal Acquisition Regulation prevents contracting agencies from counting all elements of contracts performed by small business towards small business procurement goals. See FAR 52.219-9(1).

<sup>4</sup> Brian Friel & Paul Murphy, Big MACs in 2011: Continued Growth, Tougher Competition. Bloomberg Government, 3 (March 27, 2012).

<sup>5</sup> *Id.* at 11.