

Statement of

Mr. Joel P. Zingesser of Grunley Construction Company, Inc.

on behalf of

The Associated General Contractors of America

to the

**Subcommittee on Government Management, Organization, and
Procurement**

Committee on Oversight and Government Reform

U.S. House of Representatives

For a hearing on

**“Minority Contracting: Opportunities and Challenges for Current and
Future Minority-Owned Business”**

September 22, 2010

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THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 33,000 firms, including 7,000 of America's leading general contractors, and over 12,000 specialty-contracting firms. Over 13,000 service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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Statement of Mr. Joel P. Zingesser
Grunley Construction Company, Inc., Rockville, Maryland
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform
United States House of Representatives
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My name is Joel Zingesser of Grunley Construction, where I lead the firm's strategic planning, business development, and sustainable design/construction efforts. For 55 years our firm has specialized in renovations, restorations, and modernizations of large-scale government and commercial buildings, including office, laboratory, and educational facilities. In addition we construct new facilities and additions to existing buildings for both public and private sector clients.

On behalf of the Associated General Contractors of America (AGC), we strongly support full and open competition for the many contracts necessary to construct improvements to real property. This includes competition among general contractors, specialty contractors, suppliers and service providers. Over the years, it has been established that such competition energizes and improves the construction industry to the benefit of the industry and the nation as a whole. As the Committee considers the changing Federal procurement landscape, AGC offers the following points for consideration.

On The Issue

AGC supports procurement reform to improve delivery of federal construction services. Reform of the federal procurement process should recognize construction's unique melding of industry sectors while ensuring the government is using the most cost-effective method of procurement.

AGC is working to foster a business climate that enhances opportunities for all businesses. Construction is an intensely competitive industry, and we believe that competition penalizes any firm that resorts to discrimination. To succeed, construction firms have to focus on price, quality and reliability. Our members recognize the benefits that the 8(a) program and the Disadvantage Business Enterprise (DBE) programs have to contractors who qualify for these programs. We also have growing concerns about the need for Federal decision-makers to address the challenges small businesses that do not qualify for any special preferences are facing in today's harsh economic conditions. We believe that current Federal rules need to be updated to generate more collaboration, mentoring and assistance no matter who is the business owner.

AGC would like to discuss issues surrounding an issue of great concern to us that we believe if addressed, will bring the greatest possible amount of transparency to the Federal contracting, and specifically contracting with small and disadvantaged businesses nationwide.

Subcontracting Goal Achievement: The Key to Transparency

Current SBA rules require small business set-asides and establish small business goals to be met by large businesses to assure that significant portions of federal procurement dollars flow to small business firms. But the rules for keeping track and measuring the flow of dollars to small

businesses do not take into account the actual amounts that flow down to small businesses below the first tier level of subcontracting. Within the construction industry, the bulk of the work is performed by subcontractors that specialize in a specific expertise and in turn hire second tier and third tier firms 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 is not asked to report the flow of dollars that are going to small businesses hired below the first tier subcontractor. This is because the contracting agency is not allowed to take credit for those dollars towards its goals. Allowing prime contractors to report small business subcontracting at all tiers would demonstrate true participation of small businesses on a federal contract and would show more accurately how the construction industry supports and is dependent upon small businesses.

In attempting to meet the various small business goals under the current system, prime contractors are often required to consider subcontractor choices for larger projects that are beyond the capacity (especially bonding capacity) of small businesses. The present approach to keeping score 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. If credit for small business participation were allowed to be counted toward the goals when the small businesses are performing in their logical and most comfortable roles, the true benefits of small business to the construction industry will be measured, accounted for, and recognized for what they are – critical to the success of our industry. Moreover, such a system would allow small and emerging firms to grow in a natural manner that will not force them to become over extended and ultimately will make them more successful.

Changing the scoring system will let prime contractors and small businesses determine together the best arrangement of large and small subcontractors according to capabilities, capacity and availability. Accurately accounting for small business participation at all levels of the construction process helps federal agencies better meet set-aside goals established by the Small Business Act and helps prime contractors get credit for significant small business participation in government contracts.

The shift to Electronic Subcontractor Reporting System (eSRS) by the federal government provides the opportunity to simply and accurately gather the small business data at all tiers and thus correct this problem. The system has the capability to track and report small business subcontractors on multiple tiers, yet current rules do not encourage prime contractors and their subcontractors to account for total small business participation at all tiers. AGC recommends Congress direct a change to the system by amending the Federal Acquisition Regulation (FAR Part 52.219-9(l)) through legislation to allow all parties to report and receive credit for the dollars flowing to all small businesses on Federal contracts. We have attached suggested language for the Committee’s consideration.

Conclusion

Thank you for the opportunity to provide our views on working with the Federal market. We believe this market offers tremendous opportunities for both construction contractors and the Federal government. AGC looks forward to continue working with the Subcommittee on these critically important issues.



Small Business Participation

Allow Prime Contractors to Include All Participating Subcontractors to Determine Goal Achievement

Background:

- Current Small Business Administration rules require set-asides for small business subcontractors, but prohibit prime contractors from truly accounting for the total amount of dollars flowing to small businesses. Under the current system, if an other-than-small business is included in first-tier subcontractors, a prime contractor is prevented from reporting further dollars going to small businesses. This happens regardless of whether small business subcontractors comprise other tiers or even the rest of the first tier.

AGC Message:

- **Demonstrate True Small Business Participation.** Allowing prime contractors to report small business subcontracting at all tiers would demonstrate true small business participation on a federal contract. Accurately accounting for small business participation helps federal agencies better meet set-aside goals established by the Small Business Act and helps prime contractors get credit for small business participation in government contracts.
- **Ensure Best Match of Contractor Capacity and Procurement Requirements.** The current system leaves prime contractors with inadequate subcontractor choices for larger projects that are beyond the capacity (especially bonding capacity) of small businesses. Changing the system lets prime contractors determine the best mix of large and small subcontractors according to capacity and availability.
- **Shift to Electronic Subcontractor Reporting System (ESRS) Provides A Potential Remedy.** The shift to ESRS by the federal government provides a unique opportunity to correct this problem. The system has the capability to track and report small business subcontractors on multiple tiers, yet current rules still prevent prime contractors from accounting for total small business participation at all tiers. Directing a change to the system through legislation, before the system becomes widespread, could potentially help all parties track the dollars flowing to small businesses. FAR 52.219-9(1) should be amended to allow subcontract award data reported by prime Contractors and subcontractors to be included at all lower tiers.

FAR 52.219-9(1):

The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall include ~~be limited to~~ awards made to ~~their immediate next tier~~ subcontractors at all lower tiers. ~~Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.~~