

U.S. SMALL BUSINESS ADMINISTRATION

RegFair Hearing

San Diego, CA

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PROCEEDINGS

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RUBEN GARCIA: It's indeed gratifying to see a young man that went from a businessman to a public servant and now serves in the capacity of councilmember.

Now it's my pleasure to present to you the National Ombudsman and Assistant Administrator of Regulatory Enforcement Fairness, and Ms. Vassar, Esther H. Vassar, was appointed by the Administration in 2009, August of 2009 but in her former roles she was the State Director of Regulatory Agencies and Virginia's Department of Minority Business Enterprises. She's also an owner of two small businesses and has prominent roles working with business and community organizations. Ms. Vassar brings first-hand experience that will greatly enhance the communication and relationship between small businesses and federal regulatory agencies. Ms. Vassar a three-time gubernatorial appointee is a graduate of Howard University, the University of Virginia, and Harvard University Executive Program for State Officials, Virginia Executive Institute, and Leadership Metro Richmond. Prior to her appointment as National Ombudsman she served as Commissioner for the Virginia Department of Alcoholic Beverage Control, a regulatory agency with more than 2,000 employees. In 2008 Ms. Vassar was inducted into the George Washington Spirit Society for her extraordinary contributions to the international community through her dedication and remarkable effectiveness and effective advancement of alcohol-related social responsibility and moderation. In 2008 also Ms. Vassar received the Dominion Virginia Power's Strong Men and Women Excellence in Leadership Award. In 2004 she received the NAACP Oliver W. Hill Freedom Fighter Award named, in honor of the great civil rights attorney Oliver Hill. Ms. Vassar received the 2002 Lifetime Achievement Award from the Greater Richmond Urban League for her exceptional contributions to the community and to the greater good of the citizenry. Ladies and gentlemen I present to you National Ombudsman Esther Vassar.

ESTHER VASSAR: Thank you Ruben. First of all I want to acknowledge the great cooperation and help that Ruben and his staff have provided me in making this hearing possible and all of the other activities that they have planned for me while I'm here this week. Certainly my job as National Ombudsman could not be done without people on the ground who make these arrangements. My job requires that I travel around the country and have hearings, roundtables, and meet with small business owners and small business providers to hear about regulatory fairness issues, federal regulatory fairness issues from any federal agency in the government. And then to condense those complaints or comments into something that is reasonable to put in a

letter and send it to the agencies. They then respond to the comments through us and we send it back to the small business. Now we don't always resolve the issue the way that the small businesses may have wished but you will get a response. One of my challenges since assuring this role has been to let people know that we exist. How many of you knew that we existed? Nobody? Two.

MR. GARCIA: Or three.

MS. VASSAR: So you can see that I'm faced with a challenge; but this is one way that we can remove that as a challenge. And I do view it as an opportunity because I get to come across the country and meet all of these wonderful people who have at the core of their jobs, helping small businesses.

We also have what's known as our regulatory regional RegFair boards and very fortunately we have two members of those boards. Now, these boards are a tremendous help whenever I come to cities like San Diego, and when I go next year to Hawaii. They will set up activities for me to talk about how we can help small businesses at the federal government level, and we are very fortunate to have two members as I said, Mr. Ernest Reyes who is here. Mr Reyes is serving his second term here. He is from San Diego and he's a business man and he will be working with us to make sure that your voices are heard and he is a contact person for you whenever you have issues along with Ruben and his group here. I can't do it but you have somebody here on the ground who will not only listen but take action to assist you with your regulatory issues. And from Hawaii, Mr. Eddy Kemp and he, did you come from Hawaii to come to the hearing Mr. Kemp? Can you imagine dedication of that kind? I mean really, really! So that tells you the caliber of persons we have; and these people are not just people who said I want to be on a board: they're vetted and they are fully business people. They are required to be business owners or represent a business organization, and they are fully dedicated to donating their time to be your voice. So you've got a lot of voices. So let's make those voices heard.

We have several federal agencies represented here. I would like to thank you for coming. One of the great challenges that the President has charged us with is across agency collaboration, and I want to thank all of the agencies, both local and federal, who have come today and who will continue to work with us as we listen to small business concerns. All of the other people who are representing different organizations thank you for coming; and the small businesses especially, thank you for coming and believing that we will make your voices heard -because it is true--- and it's a promise that I make to you. So we look forward to hearing your comments as you speak today.

Now, I have a brief PowerPoint. It's just about seven or eight slides which kind of deals with my approach to this job and that means that you get a message from the highest point of government, the

President of the United States, then you get a message from the Administrator, then you get a message from me and you see that this is not something that I take lightly. It's something that we have been charged to do from the President of the United States. So if you'll bear with me with my technologically challenged self. The purpose here is to rescue me if I have any problems.

This is a message from the President, **protecting small businesses**. So it kind of reinforces in your mind that this is a national initiative and it comes from leadership at the top. We took this quote from the President: “We can rebuild this economy on a new strong foundation that leads to more jobs and greater prosperity. I believe a key part of that foundation is America's small businesses, the places where most new jobs begin. These companies represent the essence of the American spirit, the promise that anyone can succeed in this country if you have a good idea and the determination to see it through”. That last sentence there *that you have a vision and you dedicate yourself and your resources to making that vision a reality*-That's from President Barack Obama.

Our Administrator, Karen Mills certainly supports you as you try to make your businesses not only survive but to grow, and her words are that **SBA provides small businesses with tools they need to grow and create jobs**. “SBA programs are focused on providing small businesses with access to capital, opportunities in government contracting, and counseling and entrepreneurial education, or the three C's, Capital, Contracting, Counseling. We also help with low-interest loans for business owners, home owners, and renters affected by disasters. More than half of all working Americans own or work for a small business and small businesses lead the way in economic recovery, innovation, and global competitiveness.” These words reinforce something that the Councilman said. And finally, **committed to small business regulatory fairness**. “One of the biggest concerns small business owners face is unfair enforcement of federal regulations. They also worry about telling their stories because they fear retaliation by federal agencies. Small business owners want to play by the rules and comply with federal regulations and we want federal regulators to assist business owners with compliance rather than go straight to the penalty stage.” This is important, *education versus penalty, avoidance rather than punishment*. As any parent knows, if you could prevent your kids from doing something, you'd rather do that- rather than wait until they do it and then punish them.

How can just as a brief kind of an overview, or how can we at the national ombudsman office help? We can act as a troubleshooter between small businesses and federal agencies. We can conduct public hearings as this one, and roundtables to hear concerns and comments from small businesses regarding federal regulatory enforcement of compliance assistance. We then get to rate federal agencies on their

responsiveness to small businesses and report the findings to Congress. A lot of people say how do you do that? How do you make sure they answer you? That's how we do it. And we work toward ensuring that federal regulatory enforcement is effective and not excessive.

In order to get in the game with our office you submit a comment, and Ruben asked you if you'd signed in but those people who are testifying have also as you know submitted comment forms. You provide a short written explanation of your situation and you cite specifics. You can do it on our website or you can bring it to Ruben, or you can give it to Mr. Reyes and they'll get it to us. You can provide specific details, names, dates, locations, correspondence that you may have had with the federal agency and allow full disclosure of your comment to receive a faster, better response. There's a box where you can check that you want it to be kept, you want to be anonymous, but then how can we help you? If an agency says, we're going to give you back your money but who are you? So you can see why that's there. Avoid sending legal briefs or court papers because those are yours for your records. And these are the final things that you can see for yourself. Now websites that are useful, I'll kind of leave these on the board so you can copy them.

Okay well you can have that. That's just as valuable. We'll go back to that. So at the end we will allow any questions that you may have about any of that but I thought it important that you know the process because among all of you, only four people signed up to make comments and other people may want to do that later.

Alright we'll now call the hearing to order. This hearing is held to hear public testimony about regulatory fairness issues. I would ask you to abide by certain ground rules. We would like you to limit your comments to about 5 minutes to 7 minutes so it won't get too long, and present the information that I've stated here. I think Ms. Goldkorn—

RUTHEE GOLDKORN: Yes ma'am.

MS. VASSAR: I heard you sign on a few moments ago.

MS. GOLDKORN: Yes ma'am.

MS. VASSAR: Welcome. Ms. Ruthee Goldkorn is our first commenter and she's going to share with us her concern about federal regulations. Are you ready to do that Ms. Goldkorn?

MS. GOLDKORN: Yes ma'am.

MS. VASSAR: Alright you can begin.

MS. GOLDKORN: Thank you, excuse me. As you stated my name is Ruthee Goldkorn and I am the owner of a small business, No Barriers Disabled Access Consulting and Advocacy Services. I'm also on the executive board of two disability rights advocacy organizations. The issue that I wanted to bring forward at this time and that I thought

was relevant to the matters at hand and this particular hearing are the issues of the disability community not only as consumers of small businesses but also as small business owners. As a regulatory agency responsible for ensuring compliance with all federal requirements for qualifying for SBA assistance and addressing the issues of problems as well as solutions the small businesses face every day and as small business owners and consumers of same people with disability regularly face exclusion secondary to lack of disabled access under the federal ADA and 504 standards for physical and program compliance. And I believe that it is appropriate for the SBA to include policies not just of nondiscrimination because that's just a blanket statement but specifically for physical and program access within the physical plants as well as the daily operations of small businesses. And I hope no one in the audience and yourself Ms. Vassar take offense but this is the reality that we face every day. We are viewed as the enemy of small business. We have been accused by local and statewide chambers of commerce as being business killers. We are not viewed as an economic demographic that has any bearing on small business and the ADA is not supposed to be complaint and litigation driven for full compliance. The issue that I wanted to bring up and that I submitted in my written comments were whether or not the SBA in its qualifying requirements will address not only nondiscrimination policies under state and federal civil rights statutes but specifically address the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 so that the disability community which we now comprise 25 percent and we are growing by leaps and bounds because the baby boomers were not only born in 18 years from 1946 through 1964 but every 8 seconds so as of January 1, 2008 every 8 seconds someone is turning 62 and infrastructure and programs and agencies I don't think are ready for that and it doesn't mean that you have a disability it just means that that disability is no longer in the next century and you're lucky if it's not around the corner at the next block, and addressing our needs and physical and programmatic access I think does fall under regulatory fairness of the Small Business Administration. Thank you very much for accepting my written comments and for allowing me to speak with you this afternoon.

MS. VASSAR: Well thank you and we will certainly hear you and will respond to that appropriately I hope. Now specifically what are some of your suggestions for compliance Ms. Goldkorn?

MS. GOLDKORN: When a small business application is received for a loan or other kinds of assistance through your regulatory agency a question needs to be answered do you have full and complete physical access to your business and programmatic access? I think that a straight up black and white question needs to be asked and part of the SBA process fully integrated into your systems.

MS. VASSAR: Okay, okay. You put that on your comment

what you just said right?

MS. GOLDKORN: That is correct.

MS. VASSAR: Okay I haven't seen your comment that's why I was asking that question. Thank you. Thank you. Are you going to stay on for the other people to testify?

MS. GOLDKORN: Yes ma'am. Thank you. I appreciate that and thank you again for the opportunity.

MS. VASSAR: Thank you. Our next commenter, Mr. Art Delgado. Welcome Mr. Delgado.

ART DELGADO: Thank you. I'm with the National Hispanic Builders Association and I'll just quickly tell you that I started with Lyndon Johnson so it's been a while. And we're been advocating for small businesses for quite a while. We're a close association of investors primarily and along the way here and recently we decided that we wanted to see if we could take a small business to the next level and try to help them succeed. For that purpose we have Mrs. Rosalie Silva from Silva General Construction here, and she is an 8a certified, MBE, UDBE, and soon hopefully there will be a HUBZone certified. And our point of contention here in 1988 we were named as one of the 40 nonprofits to outreach for the SBA by the Clinton administration and honored for that at the White House and what not and what that got us was in my phone there's a set, the phone number to the National Ombudsman. So that was good, and it really was because National Ombudsman at that time really helped us on small issues, not so much on regulatory but basically finding where did it go? And this is pre-9/11. Things changed a lot. We were able to walk the halls in those days and just talk to anybody just corner them, grab them, or what not, and at that time our advocate was Duncan Hunt [phonetic] and Kato Sedilla [phonetic] who has passed away was a wonderful gentleman, was really a strong advocate for small business and the community of San Diego, so that we lost Kato and Duncan when on to other things, and today we're hoping that we can still relate to some of the issues that the small business has.

We have three items here and we're going to run out of time because I want to introduce very quickly Mrs. Rosalie Silva. Three items, one is a NAICS quote issue and this is an issue for the SBA primarily. And basically whenever you bid on a contract you are given a solicitation, the solicitation gives you a code, and that code is if you have that code you apply to be able to bid on that contract. But under the Mentor-Protégée program you can blend codes so that recently the Silvas lost a contract and they were a million dollars under the winning bid and they simply took the other one on face value but my argument at the time was that's an environmental company bidding on a vertical construction project. That was 561990/236220 which is a general construction. The bottom line is that they got the job and I really think

that the prime contractor which was the 8a who is no longer in contract with the same general contractor should be the one that has the code for the solicitation. Otherwise it's a heck of a pass through. I mean the guys out here, you know, slopping hogs and he's over here building buildings you know? As long as the guy is building buildings it's part of the deal they get to bid on that. Well that's one issue.

The second issue is something Ruben introduced us to that we went out and applied for Ruben and that was the ARC loan. Now one of the things that they most need in small business is some kind of a line of credit and that is the most difficult thing. Recently you introduced the ARC loan to us at another hearing. We went out and we put our foot forward on that puppy. We've done everything imaginable for Wells Fargo, U.S. Bank. Why don't you bring it up here and show you what an application for a 36,000-dollar loan is it?

MALE VOICE: Thirty five.

MR. DELGADO: Thirty-five thousand dollar loan? This is the application for a 35,000-dollar loan.

FEMALE VOICE: Oh my goodness.

MR. DELGADO: Okay? And this puppy has gone through just about every bank and if they weren't rude to us they were amused and we went all the way to the top in Minnesota I believe with Wells Fargo and they sent this back. And this is an ARC application. Needless to say we haven't got, it's been almost a year and a half, two years?

FEMALE VOICE: Yeah.

MR. DELGADO: Yeah that is an ARC loan so nothing coming on that, nothing probably ever will. That was actually done just to help small businesses get a 35,000-dollar loan which you could do with a credit card. Not anymore but you could then.

And the second thing here is the HUBZone, historically underutilized business zone. It's held by the SBA. The SBA certifies an individual who has 35 percent of his employees from the HUBZone living in what might be classified as the barrio, low-income area, difficult development area et cetera, a poor neighborhood, 35-percent of your core employees from your principle office. Damn. This is an application for the HUBZone. Once you tell them that here is my 35 people, here is my payroll records this is it, and they, and they let you know 11 months from now we'll get back to you. Okay to be an 8a-certified contractor it could be about a six-month process, you'd probably get through in about four if you got all your paperwork but, but they're not kidding. We're in the eleventh month. What's happened along the way the correspondence these are the emails. These are the emails for the HUBZone. Okay? This is just not the phone calls; this is just the emails in 11 months. The process has been such that every time we get close they ask for the same thing over and over again, the

same exact information because they replace someone and then we're burdened, we're very burdened. Well they are because when Obama put out so much money, so many people showed up and said I want to be in the HUBZone, I want to apply, et cetera, et cetera, but there's really no excuse for the fact that we've submitted over and over the same information. I do want to say one thing. I understand we're getting it either today or tomorrow, at least we were told. Okay? So I don't want to say too much more about the HUBZone other than it's tough to get. Now let me just say this that once you do get it it's become a tool that the Department of - - is primary where they are going or were looks very favorably upon and issuing solicitations and contracts. The HUBZones are pretty much the coming thing. And basically in essence you're hiring people who have come from underemployed areas, underutilized areas. So it's a good program there's no argument about it.

I think that our time is going to be up but I just wanted to say that Rosalie Silva has done everything by the book and more and I guess it's been a lot and I've been there for about a year with them. Every time it looks like it's hopeless I drag somebody into the conversation and I tell you what we're not short of dragging people into the conversation. My son-in-law runs Orange County, San Bernardino County, Riverside County, and my daughter, his wife is the Latino Affairs Officer for - - . So I get a chance to actually pull them in the loop periodically. Susan Davis is our congresswoman and they have a - - have gone for this. Ernie is a good friend of ours. We've done everything imaginable to try to get this thing expedited, and the process and the time that we've made this application there have been HUBZone issued contracts to the Silvas that could not be gotten and probably cost about five million dollars. So they've lost about five million dollars worth of work in the process. But it hasn't been their fault. It's been actually a system that's really over burdened and we'd like to highlight the difficulties that we've had with it, and in particular both the ARC and the HUBZone. And thank you very much.

MS. VASSAR: Thank you Mr. Delgado and Ms. Silva. Thank you. I must say we are not unaware of those complications and in fact we—I hate to say it but we are working on them and they will get better, they will get better. And we will certainly raise this to the top of the pyramid in terms of a concern. So you speak not only for yourself but for hundreds and hundreds of small businesses who are experiencing the same thing. So thank you.

FEMALE VOICE: Thank you.

MS. VASSAR: Robin Mickle? Did I pronounce that right Mr. Mickle?

WILL NEVILLES: You did but I'm not Robin Mickle.

MS. VASSAR: Okay well you got up.

WILL NEVILLES: I'm standing in for Robin Mickle today. I'm Will Nevilles. I represent INDUS—

MS. VASSAR: Oh yes, he's, okay—

WILL NEVILLES: Yeah INDUS Technology. We're a small and disadvantaged small business and we are about to grow up and find ourselves in no person's land, that is as an adolescent business and our issue we would like to address today has to do with the change in marketing landscape, competitive landscape, as well as what we feel is the lack of maturity on the NAICS code ratings as the economy changes, as the escalation over time changes so what I would like to do is make these three points, make a couple of points and then end this with a few suggestions.

First of all the change in the defense services market landscape. We've found ourselves in the midst of multiple billion-dollar companies who through mergers and acquisitions are really working the same spaces and as we grow into the, exceed the current code we're in which is about 27 million we find that there's more and more multiple billion-dollar companies in that area and probably the same number of smaller companies who are less than 27 million. So we're somewhere between the 27 million and the 100 million dollar range where we have to compete and so this brings some difficulty in terms of how successful we are as a medium-sized business. And there are a number of things that contribute to this. First of all I mentioned mergers and acquisitions on the part of the larger company and then there's the public regulatory things actually in those kinds of things would really impact larger businesses, the bottom line in terms of bringing on more infrastructures to take a look at the everyday regulatory practices. So the bottom line is to get large quick so that you can sort of offset some of these additional costs associated with being a large business.

The other thing that contributes to the situation is the fact that the NAICS code has not grown, kept pace with the employment ECI such that, the employment cost index, has not kept pace with that and so what we find ourselves doing is competing with large businesses on the services side and we lose the benefit of the 51 percent as we grow out of this status and there's also no incentive for large businesses to team or work in the public sector with a medium sized business. There's no, they get no credit for doing that. So what we are saying that to stay small or risk losing the momentum they gained by being the top performer in the marketplace.

The other thing is that the employment cost index based on wages and salaries has grown from about 1.4 percent to about 3.9 percent and of course the old NAICS code the 8711 that was the size standard in 1994 and was a 20-million-dollar standard and what we currently are working under in most cases in the engineering services area is a 541330 size standard which is 27 million so if we stay below the 27 million we'll be fine and we can take advantage of the 51 percent

but as a top performer we're sort of pushing ourselves out of that range so that's causing really some problems. So with the employment cost index situation as a 20-million-dollar, and a 20-million-dollar threshold in 1994 when increased each year the ECI would really put us at about 32.5 million and not 27.0 million as we currently are right now. So basically we're saying that the next code the revenue-based thresholds are shrinking in real dollars.

And some suggestions that we thought might be appropriate for consideration; number one to increase the NAICS code index based on, not necessarily based on revenue but based on the number of employees for services-based companies. It's pretty easy for product-based companies to stay in these guidelines but a service-based company is really sort of measured on the number of employees and which is our only product. And the other thing is to the cost of the number of mergers and acquisitions that are going on and the ability for companies to get really creative and firewalling themselves from products side to services side to really enforce the organizational conflict of interest situations that are appropriate to force the larger companies to really play fair in the sandbox. So these are some of the considerations we thought would be suitable for consideration going forward, and we certainly appreciate the opportunity to come here and present these issues to you.

MS. VASSAR: Thank you. Would you just for the record repeat your name again.

MR. NEVILLES: I'm Will Nevilles, INDUS Technology.

MS. VASSAR: Thank you for standing in for Robin Mickle. Mr. Eric DeGraff? Welcome and thank you for coming.

ERIC DEGRAFF: Thank you. Well thank you for the opportunity today. I am Eric DeGraff and I'm the owner and founder of X-Feds. We just as INDUS Technology and what Mr. Nevilles was talking about we are also in the defense consulting services arena here in San Diego. As opposed to Mr. DeMaio who went from private to public I was a public servant for 15 years then going into private, have owned a couple of businesses, started X-Feds in 2004. We've been around for about six years, we have about 70 employees locally here in the San Diego area. I would like to echo some of those comments. We have gone through some of the same issues and since we are a top performer in this arena too we are going through some of the very similar size aspects from the NAICS code so I'm definitely a supporter of everything that Mr. Nevilles talked about from the NAICS code and those recommendations.

What I would like to talk about today is some of the experience we've had over the last six years specifically in the area of government contracting and some of the oversight and then I'll come up and end with some of the recommendations for some of the things and barriers

that perhaps we have and maybe some recommendations on how to possibly fix some of those barriers. Some of the issues we've had are there have been things where they've taken some, especially within with the Department of Defense contracting areas here locally, multiple small business contracts. They roll them up into large full and open contracts, no oversight, they go into full and open and then some of the larger businesses, especially like an SAIC or a Lockheed Martin will go ahead and bid on them keeping us down from competing in those arenas. What we're really seeking is that opportunity as a small business and we are what I like to term as a vanilla small business, no special designation to that, but that opportunity to go ahead and compete in those areas as a small business because as a top performer we'd like that ability to compete. We definitely think we can compete with some of the larger businesses and graduate into that medium and large size businesses. So some of those things when we get into barriers of multiple small business contracts being consolidated so large businesses can compete, also large businesses have to submit a small business contracting plan to do a certain percentage with small businesses. Once that award is done they do that small business contracting plan, we've noticed that there is no enforcement so then they actually set aside those percentages and oversight of that large business to live up to those percentages after contract award unless they are incentivized within that contract to actually get awards and award fees in those contracts to actually award the small businesses. There is no incentive just like Mr. Nevilles was talking about.

A third thing is government still uses large business contracts even after a small business set aside award. They still like to go back to their provider of choice even though there is a small business that competed for that work to go ahead and get those elements of business. Some of the government employees in the contracting agencies allow them to do it especially within the Department of Defense to still go out to a large business even though there was a completed small business contract.

The last is, and probably the more significant especially locally here, is a formal process open to the public visual that is where there are small business set asides and to get market surveys or sources thought to actually have that ability to compete for even contracts whether it's 5 people, 10 people, in a services type of business to have that insight as opposed to just opening it up to a full and open because a large business had it before and to have that ability to go through the process finding out if there's a small business of any type capable of performing that contract, and we never even have the ability or the insight until it is already out on the street, and then they can't reverse it and the small business advocates even within some of the agencies have already signed off without doing an appropriate survey or anything known to businesses on a public forum of how that got out there. So some of the ways that I think as a recommendation is to make it visual

to everybody that process for those contracts especially whether it's a size, whether it's a number of people or what have you and an enforcement behind that to have them follow those process and procedures, and to have policy and enforcement from that side. There are some other issues that I've seen in this regard but, and it is kind of funny if you go ahead and you start looking at how the process went about in place you do feel like you can't go there because you might get penalized by that agency later on even by the small business advocate. I have gone through every one of these things and gone through some of this and even lost work to large businesses in this arena, and at the fear of going ahead and getting penalized by that same agency later on you do feel that reluctance to go ahead and create an issue. It's almost like being a whistleblower so to speak.

One other issue if I could that's totally unrelated to that, one of the things, and since we've talked about lines of credit as a small business and a small business owner one of those things in supporting the government and government services and government contracting area one of the things in order to maintain payroll is we have to seek a line of credit while the government goes through its process and we wait for Congress to do their job for continuing resolution, we wait for that money while still supporting that government agency while going through not only the bureaucracy and contract and finance to get paid we have to get a line of credit sometimes to make sure we ensure payroll, and we've gone, in fact I've gone this year and the last two years where I've had to bankroll the company five to six months while waiting for a continuing resolution as well as their implementation of ERP or other things, waiting five to six months, bankrolling our payroll of 70 employees out of my pocket. One of the interesting things in being a defense contract provider is that line of credit and that interest you're not allowed to write off even though you're supporting that. You're not only not allowed to write it off but you can't even bill them back for that interest you've incurred to support that government agency according to the DCAA rules. What I would like to do is as a small business advocate—that also applies to large businesses but for a small business while we're putting payroll out and it's coming out of our pockets to ensure that payroll and employment we have to do that and it's so hard to get a line of credit and maintain that line of credit for that many people, and we can't even get rewarded on the backside for the interest to still support that organization where we're a vital contractor support to make sure that they ensure and keep their mission. We can't even get that support to get that interest paid. We have to eat that out of our own pay. So with that that's the end of my issues.

MS. VASSAR: Where would you think that would fall? The IRS or what?

MR. DEGRAFF: It's not the IRS it's actually in the Defense Contract Administration Agency and also the Defense Finance and

Accounting Service, and right now there is in the Federal Acquisition Regulation that regulation would have to change for us to go ahead and have that ability especially as a small business to go ahead and be able to at least write that off knowing you're supporting that government mission-funded agency.

MS. VASSAR: Okay.

MR. GARCIA: Can I get a clarification from you on point number four you made government uses provider of choice. Were you talking specifically the Department of Defense or just in general?

MR. DEGRAFF: For my specific experience it's been within the Department of Defense whether it's Navy or Marine Corp or Air Force they still like to go back to some of their favorite businesses or an ease of contract use that would whether it's Computer Sciences Corporation or Lockheed Martin as opposed to going to a specific statement of work that we competed on and were awarded a contract. We've already had them also go and use other contracts to get to their provider of choice which means that the government employees have chosen to go to a specific contractor because they still like them over there. And here locally we've had certain contractors go to SAIC specifically in that regard, to go ahead even though we've owned that contract as a small business provider. And we got that small business set aside.

MR. GARCIA: Thank you.

MS. VASSAR: Well you can see how informative these hearings are for everybody involved and how beneficial they are to hear them not only to know about them when they're sent to us but to hear them from the mouths of small businesses it has a greater impact I think. That's why I appreciate this job so much because it gives me that opportunity and I can carry that passion back to the agencies as I meet with them. So thank you all for your testimony. That concludes the four public testimony statements. Are there any questions from anyone in the room? Yes?

DAVID ABERIZK: I have a comment first. I didn't submit because I wasn't sure I could be here today but—

MR. GARCIA: Could you do us a favor please? If you could stand so that your voice would carry? Or—

MS. VASSAR: Come up here.

MR. GARCIA: —if you come up here. And also if you would give us your name and the company you represent. Thank you.

MR. ABERIZK: David Aberizk, Integrated Consultants. We're a small, truly small, under 10 employees, firm. We support the federal government engineering services and professional research and development. So I just wanted to talk about on the financial side. We

looked at a 7a loan, there were these SBA loans and the 508 loan. My suggestion is that these loans even though the government is willing to back them I could go out and qualify for a lower percentage loan without using the program. The program is set up to assist in my mind if you're below or above the ARC line so between 200,000 and a million and a half say the loan value, the bank is not taking into consideration that the government is backing the loan 90 percent and they're charging you a fee to apply for the loan and so by the time you're done looking at what the loan costs are you're better off not using the program. And I just think that you don't need, if someone in any district just tried to go and apply for a loan as a small business they would be able to see. So people who are actually regulating these things if they looked at it they would, they would see that there's really no advantage to those programs. Maybe you're two million now, I mean it pays because a small business might not be able to secure a loan that large without, and they're more willing to take on those larger fees. But I can tell you in this range in the 200 to a million dollar range it made no sense for me to utilize the program that I know the government is spending a lot of money on. And we recently relinquished our HUBZone status. We were one of the first HUBZone businesses in San Diego and we were the first HUBZone business to hold a GSA schedule in professional services. And we relinquished it, the side that we used that for was on the A&E work. We had bid some work. We were going to be able to get it and we had a bond issue okay? The same exact thing. This whole bond program that they have it was of no value to me. I finally sat down with a banker and they said look by the time we're done qualifying you through what the government allows in the bond program you can qualify on your own. They don't take that advantage of the 90 percent backing and they're not willing to, they're not willing to, and I don't know why but they're not willing to. It's a, I don't know if I'm articulating this properly, but they do not seem to consider the fact that the government is backing the loan. I had no way of securing that bond and actually I have stopped going after that type of work.

So and I just would like to kind of echo the comment on being a government vendor and waiting for contracts to finally come through and not only can we not claim the interest it's not even an allowable charge in our DCAA accounting. So it doesn't even get put back into our overhead structure. And I think if that bite was put into—it's not the fact that we just lose the time and that but somehow or another someone would have to answer for, there is no answering for the delay. I mean as much as I like to hear that the President is trying to help us just by the budget not being put out when it should have and the continuing resolutions on the budget it impacted us as small business people. We're still waiting for 2010 fiscal year issues to be processed. Thank you.

MS. VASSAR: Thank you.

MR. GARCIA: As a point of information I would just like to say that under ARRA, under the American Recovery and Reinvestment ACT, there were funds made available by the President and Congress to reduce, not only reduce the cost but eliminate fees and in most cases of 7a loans. So when you're talking the typical 7a loan David I understand your frustration and I understand what you articulated here but it should be noted that for the past eight months there have been, there has been a reduction or elimination of fees, and that and that it has been extended out.

MR. ABERIZK: As a matter of fact it was coming to a San Diego program that I learned of the loan, and they did tell me that the fees could, but I'm suggesting to you that even removing that fee the bank is not, they're still charging us.

MS. VASSAR: Oh.

MR. ABERIZK: Do you know what I'm saying?

MR. GARCIA: I understand.

MR. ABERIZK: So I could have walked in and did a 200,000 dollar or 400,000 dollar loan and with spending less than if I went through the process.

MR. GARCIA: Yeah point well taken. Thank you so much. Appreciate that.

MS. VASSAR: And that listen that's one of the frustrations the banks are independent of us and they tell us that it costs them as much to do a 35,000-dollar loan as a 5-million-dollar loan, and we had a hearing in another state, I mean a forum in another state, and one of the bankers was there and he said at that, that was back in the fall, he said we're not going to change our requirements. I think that they're softening a bit now and they're actually, we shifted a lot of our focus to the lenders to help them. We actually asked them to be our partners also. And so hopefully that will get better.

MALE VOICE: On that point about not changing their procedures - - on that 35,000 we just applied for - - and see what would come out of it. After going all the way to headquarters - - we came all the way back and basically they said that's them not us. And that's basically because every bank officer is protecting his turf.

MS. VASSAR: Yeah.

MALE VOICE: So it's very, very difficult to - - .

MS. VASSAR: I would like to thank you again for the questions, the answers, and the testimonies and the sharing.

MARJORY CONTRERAS: Don't you have one more?

MS. VASSAR: Oh I didn't see you I'm sorry.

MS. CONTRERAS: Oh no I'm sorry I'll get close.

MS. VASSAR: Oh okay.

MS. CONTRERAS: I didn't sign up again because I didn't ever hear about this - - . I don't even know how I got here. Somebody got my name and - - see what I can learn and - - to learn. First of all I would like to share my - - I have - - with mostly federal contractors and one of those, a small ADA that - - successful. I've - - at least 300 jobs with the Army Corp and the Navy and - - so yeah I mean I can relate to what - - supposed to be from - - very well and I've been going through all of these - - . Today I would like to help and I would like to - - somebody else but I'm still, and I'm still looking - - going through these new changes about having all these contractors coming into the federal area. One of the things that I would like to mention I lost at least three jobs lately due to - - . I just lost one for 800,000 dollars, I was the low bidder because they had - - that allowed them to say oh best value but wait a minute my technical support was not protected. Well - - one of those contractors that can do the job all the time they come out with I - - but we selected this contractor. My contract was 800,000 dollars. - - what is that? Is that - - money? I can do the job, even the - - this job. - - I was an engineer. I'm basically capable and do any - - that I can. This is making it - - practice. I have at least - - three jobs in less than three months. I know based on face value. So somebody needs to start looking into that because they have the power to do it at the - - .

Another thing is they throw this job that is more business. We are sometimes more - - we are below 17.58 - - sales. - - well if I'm scheduled for the job, if they want us to do the minimum of three jobs it's - - value. I lose my business. My company's revenue for three years is over 28 million dollars and I tell you I - - one fits in that category. I was in small business - - 3.5 - - . So I don't know why are they - - ? How come he has more business? I'm qualified for this - - or this - - now it's opened and - - for somebody else to do - - worked with the government in the - - practice. How can I just - - from that in my history of the last 15 years I don't have one job that would qualify for that. So I don't know about the - - that they - - out of the market. Why even do it - - ?

FEMALE VOICE: Ruthee Goldkorn left.

MS. CONTRERAS: There are a lot of people that - - I don't know if they're really - - . I don't understand how really the rules and regulations of the SBA, but I know I cannot do more - - . I can be the mentor. I'm looking into that as a new mentor - - contractors - - but I like - - because I like - - and what are the - - for the - - ? I have spent hours and hours searching and - - and they want business, and then they told me oh I've got to go Navy, I've got to go Air Force so I'm still confused why is it that I go out of the market but - - ? And I am one of the lucky ones that I know that as a fact, I really know that as a fact that - - and I think I'm - - . Friday I had somebody walk into the - - and she said well yeah I think - - your paperwork today. That should be

public information. It should be so easy for anybody to get into the program and get it out - - . My problem at this is don't - - I mean there is so much that - - that's why we - - so they can help us - - hopefully that will take control of the company - - and they - - now. So far the two comments that I can make and I can totally - - that this is - -

MS. VASSAR: You can, and that's the next question. Will you fill out a Comment Form?

MS. CONTRERAS: If I will?

MS. VASSAR: Yes.

MS. CONTRERAS: Oh yeah alright.

MS. VASSAR: That's the way we can—

MR. GARCIA: Could you give us your name and the company please?

MS. CONTRERAS: Sure it's Maryory Contreras.

MR. GARCIA: Maryory?

MS. CONTRERAS: Yeah and the company is Marcon Engineering.

MR. GARCIA: M-A-R-C-O-N?

MS. CONTRERAS: M-A-R-C-O-N Engineering.

MR. GARCIA: Very good.

MS. VASSAR: Do you have a Comment Form here?

MR. GARCIA: Yes I do. As a matter of fact for anyone that is interested in getting information on Mentor-Protégé on surety bonding there are two people right back here, Julie, Sally would you please stand up and Tony Vigil. Tony Vigil he's only got 44 years of experience with the SBA so he's still learning a little bit. But if you need anything as far as Mentor-Protégé, contracting, please see him. He's the Deputy District Director.

FEMALE VOICE: - - .

MR. GARCIA: Okay wonderful. Thank you.

MALE VOICE: You've seen my signature on a lot of stuff.

MS. VASSAR: Okay Ruben do you want to close us out?

MR. GARCIA: Well I just want to make sure that has everybody asked their questions or made their statements? Obviously if there is someone that came with the purpose of making a statement or a comment we certainly don't want you to leave with an empty feeling.

Alright if not I certainly want to thank all of you for being here. Obviously the purpose of the national ombudsman regulatory fairness hearing and the Board to be here is that they want to hear from you the

public. They want to hear from other federal agencies. They want to hear from anyone that has a valid comment regarding what is being done in the federal level. And again we want to thank Ms. Vassar, the National Ombudsman, because she took the time to come out to this meeting here to be here and to provide us the venue and the place and the time that she now will take all this information, gather it together, and she's going to put together a report. She will actually send letters out to the corporate agencies and she may get back to you if there is a question regarding specifically in what area you were speaking of because she wants to make sure that she gets you the answer. And if we don't get you an answer then you need to call us again and say I still haven't heard and you would like to hear something about it because at the end of the year Ms. Vassar will put together a very big report. I get a copy of it. But that report goes to the Congress. It goes to the President's office. It goes everywhere and people see it. And it's important that you know that we are actually opening up doors so that you can have a venue where you can speak to the people right at the very top. They may not be hearing you like we are right now but they will be reading the transcript and they will be seeing exactly what you said here. So Ms. Vassar thank you so much for coming and thank you for being here. We applaud you for the work that you've done and the work that you're doing now. Thank you so much.

MS. VASSAR: Thank you.

MR. GARCIA: And I want to thank all of you that took the time here. I know time is precious, it's very important what you've done, and you've come here to speak. Again I offer my office, Tony Vigil Deputy District Director, Julie Talley Chief Financial Officer, we have Cynthia Harris here, and Rosa Rodarte who is our Lead BDS. If you have any question regarding any areas that we can help you in the local office please feel free to stop them or speak to me after the meeting. And again thank you so much and I appreciate your time and thank you for being here today.

MALE VOICE: Where can we get a copy of the slides?

MR. GARCIA: The slides I believe you can provide that for us? Is that possible?

MS. VASSAR: If you put, you can put your email on and then we'll send them to you. If everybody in fact, José are you on the line?

JOSE: Yes ma'am.

MS. VASSAR: Whenever we get these comments I want to send the slides, the eight slides that I have up here, to all of the people okay?

JOSE: Okay.

MS. VASSAR: Thank you.

JOSE: You're welcome.

MR. GARCIA: Okay great. Thank you very much.

MS. VASSAR: Thank you. Jose?

JOSE: Yes ma'am?

MS. VASSAR: Thank you.

JOSE: Okay.

MS. VASSAR: We're finished here.

MR. GARCIA: I'm going to turn off the recording Jose.

JOSE: Alright.

MS. VASSAR: Thank you Ruben. Thank you Yolanda.

MALE VOICE: Thank you so much.

FEMALE VOICE: Left thank you. Please stand by.

[END Recording 2.mp3]