

U.S. SMALL BUSINESS ADMINISTRATION

RegFair Hearing

Glen Allen, VA

May 18, 2010

PROCEEDINGS

[START 164589-1]

MS. ESTHER H. VASSAR: As you all know we're here this morning to hear direction from small businesses regarding their concerns about unfair regulatory practices by several agencies. We're going to begin with that by I think we have a couple of people, two or three people on the line but we're going to begin with the public testimony at this point.

We will ask you if you're present to come to the center of the stage here and give your testimony and to limit your testimony and your comments to three to five minutes. We have quite a few people who are going to speak today so it's important that you adhere to those guidelines. Our first testimony will come from Jerry Eskew Sr.

MR. JERRY ESKEW, SR: Thank you and good morning ladies and gentlemen. I'll be as quick as I can with this and I'm reading right off of what I submitted to Mr. Williams earlier. My situation probably started in the year 1996 when I worked for a previous company that was involved in a Federal investigation and continued on for several years until they went out of business. For reasons I do not know there were a couple of agencies that took special interest in me and the agents themselves had taken special interest in me and it's been going on now for 14 years.

The most they could get us for and I say after harassing us for several years was illegal storage of a refuse which is like putting your trashcan out on the street too early and it involved us getting locked up for a few hours until they realized it was ludicrous, they let us out but nonetheless it was rather embarrassing.

I opened a business in June 2001 and I had to go through the DEQ, Department of Environmental Quality to open this business and be inspected. During that inspection one of the inspectors, a young lady, Lisa Silvia, chuckled as we were going around my facility and I asked her what was amusing. And she said that although she had never knew me she knew of my history of the previous company I worked for that had went out of business and went on to tell me that a former NCIS agent that had retired became employed by the Department of Environmental Quality and upon his employment he brought his briefcase with him which of course, I was in and he continued to try to investigate me through the department of environmental quality.

She went on to further tell me that they had to tell him to stop, he's no longer at NCIS and that he was to stop and as far as I know it did. Fortunately on my part he was called back to service because of a September 2001 incident he was called back to the CIS. I'm sorry I'm a little nervous up here. His name was Larry Remaklus. I was hopeful

that the interest had faded unfortunately it has not. Now I've been accused of several other things by special agent Henry Myers with the Department of Defense. He has also brought in the environmental pollution agency and they've accused me now of a clean border act violation and a false statement to a Federal agent. - - proposed this was going to a Federal grand jury and trying to convince me to come forward and I guess make a plea.

I believe that these special agents Henry Meyers and Romulus have misused their office for personal endeavor to defame or to - - me. I've now been investigated by these agents over 14 years and to my knowledge it's still continuing. I've been arrested for placing trash out to - - I didn't even own the company I just worked there.

The EPA is now investigating or accusing me of pumping ballast water overboard from a ship which I was involved in the ship wrecking industry. However the history will show that I refused to do the very same thing and was ejected from working for this contractor for a year at which time another contractor came in and did the very same thing I had been accused of and they've been allowed to get away with it. I can reinforce this knowledge with and I have by going through the Freedom of Information Act and have all the analysis of the water that they did and response from DEQ and agencies that they requested permission to do this. All these agencies allowed them to do it and they did pump oil and water overboard. I don't believe they're being investigated nowhere near in the manner that I am.

I don't believe that people should not be investigated; it should happen but I think 14 years of being investigated by a couple of agents from a couple of different agencies is very thorough and I think if anybody could pass the first few years and done something. I've written this letter under duress and I'm talking under duress because now I think they very well may come back and beat more fears in their endeavor to do something with me. I do believe in my innocence however history has proved that even innocent people can be convicted.

Again I hope that my voice is heard. I hope that this can be concluded in a peaceful manner but it isn't like people are coming to me and saying how can we resolve it, it's went to the penalty issue and I strongly believe that's wrong in issues of people - - and their authority. And I do thank you.

MS. VASSAR: Thank you Mr. Askew. Your company is Marine Environmental Services, Inc.?

MR. ASKEW: Yes ma'am. Thank you. Just for future testimony what we will do is take Mr. Askew's and your complaints and we will contact - - agencies - - concerns they will then and we'll also contact you Mr. Askew at the same time we - - send it out. We will give the 30 days to respond to your concerns. They can get - - because some things take longer than others but they have no - - . When we get

their responses then forward it to you. That's for everybody who is expressing concerns this morning and any time. Mr. David Faria. Welcome Mr. Faria. Am I pronouncing that correctly?

MR. DAVID FARIA: Perfect, thank you so much. Good morning. I am here to testify that one Federal government employee can make a huge difference in destroying a small business. We were awarded a contract to the four and a half year contract by the U.S. Department of Transportation considered mission critical project by the U.S. Government.

For the first two years the project went extremely well as a matter of fact we were rated by GAO, General Accounting Office, as 1 of the top 4 programs out of 200 at USDOT. After two years they even wanted to submit our name as a part of small business award. But after two years there was a change in the employment on our project. There was a new deputy associate administrator who was brought onboard and from that point on everything basically broke down.

This person tried to cut our budget by over \$500,000 a year; tried to make allegations which where none would stick. As a matter of fact she even wanted to move this out of small business program to a full and open competition. Everybody wanted to tow the line because she was very high up the agency. And as a matter of fact there are two current employees who wanted to come and to testify in our behalf, not here but at a different setting but because of the Whistleblower Act they were unable to do so. They were afraid of their own positions.

The big issue was after four and a half years under contract where they tried to make a lot of allegation, nothing could stick, and on the last month of the four and a half year contract they issued a cure notice. We sent a letter back to them saying there is nothing cure because you are making all these allegations based on deliverables that are due 30 days from now. So when I told them that what you guys are trying to do to us they sent a letter back saying thank you everything is fine.

We went to argue with them saying you cannot do this to us. You have to remove the cure notice. And they said that in the file there is no waiver which they can rescind a cure notice. They said there are no provisions in the - - to do that. So here I am still alive, the problem is I cannot go after any other Federal government contracts because in a lot of cases they ask have you been issued a cure notice. A copy - - for ten years that it had a fabulously clean record, we have been marred by the whims and fancies of one Federal government employee, Christine Leiphart at the U.S. Department of Transportation. So I'm here to make an appeal to say the for small businesses if you could kindly have somebody out there to be a spokes person for them or to help them get like because very importantly you ask at any Federal agency to the extremely higher on the totem pole nobody wants to upset the apple

cart because this person has got all the power.

So from being a stellar performer to doing extremely well in ten years we have not got one black mark and there is no way, there is no provision by which we can rescind that. So my humble plea to you is first of all thank you for having this hearing and - - to make sure that this does not happen to any other small business. The good news is since we were given that cure notice I have now moved on to get work internationally and we're doing much better than we were doing two years ago working for the U.S. Federal Government.

The problem is you cannot go after any other Federal government contract because of one black mark so if anything you can do to look into this and to see why - - targeted by one Federal government agency and if - - submit the names of other Federal government employees who told us David your company, you have a big bulls eye on your back and this person is after you because she wants to put somebody else on this - - project. In the re-compete we were nowhere in the running even though we were considered one of the best small business at USDOT. There - - . My plea is to make sure that this does not happen again to any other small business. Thank you.

MS. VASSAR: One question. Was the cure notice issued in error?

MR. FARIA: According to Jim Hopper [phonetic] who was the contacting officer he said David even if it was—even if it was issued in error there are no provisions to rescind it. All we can do is to give you a letter saying that everything is cured but I said Mr. Hopper there was nothing to cure. He said there's nothing I can do about it because it was issued by the program office. So even the contacting officer has his hands tied because of - - no cure notice can be rescinded.

MS. VASSAR: - - issue that we are dealing with clear. Thank you. Mr. Andy Jackson.

MR. JAMES JACKSON: Good morning ma'am. Thank you. I think you for the time to appear this morning and make you aware of something. I represent the 2nd Corp Consultants Incorporated; it's a Virginia based small business out of Locust Grove. We do business predominantly with the Federal government, the Department of Defense. We started our business in 2004. At the end of 2007 we had completed our third year of operating and we looked into the SBA Aid Program. I want to tell you right now we love the SBA. The SBA has been really good for us; specifically Mr. Leroy Harris here in Richmond has been a great mentor and an advocate for us. Ms. Octavia Turner been great and we've enjoyed working with her and Mr. Billy Jenkins; the VA rep at the SBA office so I'm not saying anything bad about the SBA but I would like to make a recommendation about the 8(a) program.

We applied for the 8(a) program in 2007 after going to the SBA online application and doing the certification and during the online - - said yes you are qualified or appear to be qualified, meet the requirements for application to the SBA 8(a) program. So we filed an application. We got a letter from the SBA telling us what the paperwork was that we needed to submit. In 2008 we filed our application which included all the forms downloaded from the 8(a) website which required three years of Federal tax returns; personal and corporate. Our articles of incorporation since we're incorporated in the state and all our financial documents and we turned around and we probably got that put together in about two or three weeks. Submitted it back to the SBA, I want to say it was about 60 days later that we got our package completely returned in the mail and the package said we now want a copy of an attestation letter - - your government customer showing that you're doing successful business. We want a copy of the notarized state signed articles of incorporation even though the state had the state seal and is signed by state representative, me notarizing a state document was kind of like me notarizing the constitution of the United States but I went ahead and did it. We want to see copies of all Federal contracts; we want to see copies of all the invoices submitted to these contracts during the period that you claim 8(a) status. We want an itemized breakout of subcontractors costs listed on your 90-day profit and loss sheet; we want a proof of payment to the IRS in the form of a cancelled check for your 2005 tax return. We want a copy also of you 2004 tax return even though we had provided the required three years of tax returns by providing 2005, 2006, and 2007 which were full and complete tax returns.

Then we had to download and recomplete and re-date all the SBA forms on the website.

This took us about another two weeks to get the information put back together again resubmit through Federal Express back to the SBA office in Philadelphia. About another 60 days later we got it returned again, yet asking for additional information. We provided the additional information went back up to SBA, it came back again and at this point in time the third time that we got the information back it was because we had completed the 2008 tax year, they also wanted us to submit 2008 tax returns, now a fifth year of tax returns.

That caused me a big problem because as we reviewed our financial status at the end of 2007 being a retired military officer with the retired military pay and doing three years of Federal business on Federal contracts we were pretty much pushed right up to the economic disadvantaged threshold that the SBA requires for certification or eligibility to the 8(a) program.

We were not longer qualified as of 2008. We just made too much money and the reason we made too much money is my business philosophy has been we don't bring up new employee unless we've got

90 days of payroll saved up for a new employee. That's because Federal contracting sometimes have a subject to availability of funds clause which means when I get an award in October I have to wait for the congressional budget to be signed and that could be the end of January or February before I get the funds available and I can start invoicing so I can go 90 days with no pay.

I've basically adopted that policy and because we saved up those liquid assets to cover payroll which to us is sacrosanct we would now have so much liquid assets that we were no longer qualified for the 8(a) program.

What I think from my perspective there may be some inequities. I went to an SBA small business conference it was a Patuxent River NAVAIR Small Business Conference in April. Showcased at this small business conference was two service disabled veterans on 8(a) program officers to talk about their 8(a) programs and their businesses. Both these gentlemen were very similar, backgrounds to mine, one stood up and attested that his previous year his annual sales was \$74 million. The second stood up in the 8(a) program and his previous year sales was \$45 million. In contrast this year sales are projected to be \$6.3 million. What I'm saying is there are really, really tangible benefits for being in the 8(a) program; it really gives you a procurement advantage.

My suggestions are this; that the 8(a) program consider and make public a comprehensive list on the SBA website of all documentation that would be requested by the SBA for applications to the 8(a) program. Prohibit 8(a) processors from requiring the information not listed publically on the SBA 8(a) website I think this will provide transparency and it will increase public confidence in the 8a program. Adopt a policy that an applicant's economic status is determined by the economic status that the applying entity own the date the application is first received by the SBA 8a program. This eliminates unfairness due to varying processing delays between processors in the SBA regional offices. Number three I request that they adopt a policy that documents received and deemed acceptable upon initial application will not be required to be re-dated or resubmitted. This I think eliminates redundancy, reduces workload, reduces paperwork, and expedites the processing. Thank you ma'am.

MS. VASSAR: Thank you. I think a lot of - - in here share some of the - - subjective nature so thank you. Linda Jackson.

MS. LINDA JACKSON: Good morning, thank you for the opportunity. When Mr. Williams contacted my I said whoa look like god is working both ways here. Good timing because I was wondering what is it that I do after 18 years in business enough is enough and this one I wasn't going to let go.

I have a case here dealing with, I feel, fair and open competition in personal services. I had a - - awarded to me in a competitive effort

for the office of secretary of defense, defense privacy office located in Crystal City and the contract was awarded under the Washington headquarter services worker of pentagon support service. The scope of the tax order was that the contractor will independently provide support services satisfy the overall operation objectives of the defense privacy office policy research analysis and development and training materials compliance and audit activities, communications and outreach material development.

One of the things that Premier has been excellent in over the years is - - a requirement and putting the correct talent on board and which we did, we assigned four fantastic people. The employees were excellent on several occasions, Ms .Wills, Theo Wills, and Mr. Jenkins the director had expressed this. The defense privacy management was very aware that Premier management would schedule meetings from time to time which we did and have program reviews to identify if our staff was doing what was needed.

To mention that when we first began this staffing we had an issue to come up but we saw right away one of the staff had already accepted another job before the contract started so we were replacing the person and Ms. Wills mentioned that I want a lawyer. And I said but that wasn't a requirement but we were able to accommodate that, we took lower margins in our rates because we knew it was seven month tax and it would be re-competed after seven months.

We put a lot of overhead time and GNA time in research and interviewing and screening to get the correct staff in place. After emailing to at the time came close to the seven months we did an email to Ms. Wills in January and we had not heard back from her again in February we called and left her a message asking this time for our second program review and in the review I would like to discuss the staff and if she felt they would be the type of staff she would be looking for in the future.

Later I received a call from the WHS contracting officer, Ms. Kristin Fuller saying not to speak with the client, Ms. Wills about the tax order. I said that this is pretty hard when I have four people working there daily and I'm the prime program manager for the company. I asked Ms. Fuller why was this a problem? She said because this was not a problem earlier. I asked since I have you on the phone just a reminder that this tax order would be out of funds shortly plus the end date is coming quickly. She said the client can do whatever they want to do and she hasn't consulted with me.

After emailing the clients we were three weeks later I received a email from my staff very concerned will they have a job in a few weeks. The next thing I knew I received an email from the contractor in my office forward the email to Ms. Wills attached saying do not contact the client. Issues the client was at the time moving the project

to an existing human resource company that is a subcontractor on some large human resource contract; no competition was performed even on that contract. Premier - - staff was directed by Ms. Wills to interview with this company because that is where she's put in the work.

My staff emailed and called me and in the package I turned in I - - emails attached that said we thought Premier, my staff said, we though Premier would have an opportunity to - - since we worked for Premier and they were pleased with the work. It makes government contracting look as if there are no rules of fairness. Do a good job and you still are treated unfairly. It was clear this was a personal decision on Ms. Wills' part to get whoever she wanted whether it meant going against contracting competitive competition regulations or not.

Basically she handpicked the company she wanted to go to on the effort that had been competed. This contract was under WHS and should have been re-competed again under the WHS contract BPAs of - - company. Premier was harmed in many ways; a good investment on staff and effort doesn't pay off. Everyone knows in a support tax order where rates albeit low because of the type of competition you make your profit over time which is usually the re-compete. The clients interfere engage the contract to another contractor without any type of reasoning whereas it may not be in the best interest of the government. But a personal interest on somebody's part. Ms. Wills' manager, Mr. Jenkins, appeared to have no problem with that. Small businesses have it hard enough without the interfering of the client doing unfair practices and treating the staff as if they are their personal services. Directing the staff to go into interview with another company when the company who has the tax order doesn't even know anything.

Premier would like to be compensated for not having the opportunity to compete in fair practices. We have GNA and overhead that was spent and we were not given an opportunity to re-compete to my knowledge everything should be where if it's a competitive contract it should stay competitive.

In summary Ms. Theo Wills knew she was planning something very wrong according to government fair and open competition and that is why she did not want to speak with me or was complaining to the contracting officer. As we know when you are working fairly and with honor you talk to people because you have nothing to hide. And we have attached emails and we would like that this, that the department office of secretary of defense, department of - - be contacted. I would like to know why they did not compete this effort fairly, why they felt they could direct my staff to interview with another company while they're still working with me, why they didn't feel Premier should know anything.

And I feel we had harm done. Basically they cost us money. And I would like to be compensated for it but most of all I'd like for

that to be corrected because small businesses invest money just like a big business. Now it wouldn't have been done to a big business - - they had every lawyer they could have in their staff there in her face saying you're going to compete this and you're going to compete if fairly.

If you go after the four people that's on the contract and there was a competition unless I put my rates somewhere in la land it was my win. So I feel I've been cheated out of about a million dollars based on the lifespan of the tax order that was given to another company. My staff as you read the attachments kept me - - informed because they were insulted. They had to keep jobs and I said you take your jobs because everybody got to work. But they were insulted because if you like the staff you didn't even really know the company that well so why not do a competitive. The only thing Premier asks compete the work where we have a fair opportunity to win it back. Thank you.

MS. VASSAR: And you did outline the things you want to be responded - - . Thank you. Our next testimony will come from King Khalfani.

MR. KING KHALFANI: Madam national ombudsman welcome back to the commonwealth of Virginia. When you left we were still a commonwealth now we're a confederacy. - - the James State conference NAACP as an advocate for African businesses in the Commonwealth of Virginia. This a state where African people have registered over 2,000 businesses and represented reported 20% of the population but received less than a penny on the dollar in contracts. In fact in 2003 disparity study it indicated it we were getting approximately 0.15% of a penny and due to our persistent advocacy we have improved to approximately 0.78% of a penny. This is unconscionable, unfathomable, and unacceptable.

Our issues are HUD is guaranteeing and insuring a loan for the general contractor on the form of John Marshall Hotel development into apartments and commercial space and their general contractor said he has no minority inclusion plan and is not required to by HUD. Well then they say it's not using taxpayer dollars but its using taxpayer paying employees. We demand participation in this project, we've - - given documents to that effect.

Section 3 has run billions of dollars through Richmond Virginia since the 1960s that have regulations and policies for inclusion of residents, small businesses and other underrepresented entities for full participation and would have increased the organizational capacity of African businesses by exponential numbers. We have received only a pittance because there is no coordinating entity to hold the developers and contractors accountable.

We have our proposal presented in our package. Federal stimulus taxpayer dollars are assisting the Sports Quest \$300 million development in Chesterfield County to the tune of \$30 million. They

have no inclusion plan and obviously have no intention to. We demand participation when citizen tax dollars are subsidizing a project.

Our Independent Homeowner's Association which we have a - - is requesting because of the auxiliary grant program it allows this state to set regulations that therefore place undue hardship on small and minority businesses and this has a disparity impact on the business owners and the mentally challenged, underprivileged and disenfranchised clientele they serve. They may be out in the streets soon.

We also have an issue with Ft. Lee that you know - - is happening, it bringing thousands of people here and there's a lot of building going on we are getting a pittance. So we need help in all of these means and manners. I'd like to say I'm here to speak for the Black Business Alliance of Virginia, the Independent Homeowner's Association, the Statewide Coalition for Black Business Advance Minorities groups meet in our space, and need your help and we've submitted all this in writing. Thank you and please come back to Virginia so we can get out of - - .

MS. VASSAR: Thank you Mr. Khalfani. Rosa Turner.

MS. ROSA HOLMES-TURNER: I think I can talk a little louder as well. Thank you for having us here and thank you for the opportunity to speak before you. My name is Rosa Holmes-Turner and I am Senior Vice President Operations for Graysmith Construction which is a service disabled veteran owned company when we started.

I just want to talk a little bit about that. I have counted the costs, I've counted the cost of retaliation, and I've counted the cost for a lot of things even on my personal side. So when I counted the costs from going from California to Virginia I've learned that a lot of businesses are effecting and doing the same things and running into the same hardships that our company has had and the cost that I may have to endure doesn't matter as long as someone hear what we have to say and that this matter is changed to benefit the companies that even come after us.

My issue is with the center for veteran enterprises, specifically and if I missed pronounce her name it's Karen Zusanbuay and also Ms. Gail Warner.

I was recruited and hired in 2007 by the original owners of Graysmith Construction Company service disabled veterans member Marvin Gray and Oscar Smith to serve as Senior Vice President and Construction Licensee, Marvin Gray and Oscar Smith to serve as Senior Vice President and Construction Licensee for Graysmith Construction. As an 18 year veteran from Northrop Grumman Newport News shipbuilding and former procurement officer I was well versed on policy, compliance on small businesses and government contracting.

In April 2008 Graysmith Construction applied for a service disabled veteran owned status and completed the process in June 2008 meeting all requirements. The center for veteran enterprises did not provide a verification letter. Mr. Gray was involved with the day-to-day operations for the company had been involved with the company since its existence in February 2007 and Mrs. Gray and army veteran herself, assisted her husband in payroll and banking transactions for the company. To date Graysmith has never received a verification letter although the company was 100% compliant meeting all the requirements of the regulations.

Knowing that Mr. Gray and Smith could not afford to replace my project manager's salary of \$90,000 when I was earning a project manager salary at Fulco Development my heart was touched after hearing the hardships of this soldier and his wife what they had already endured. I agreed to work for Graysmith Construction for the first six months with them only paying for my travel expenses for only \$500 a week. Work as a subcontractor in 2008, paying my own taxes and converting to a full employee status in 2009 and receiving a W2. I agreed to negotiate contracts, to ensure that my salary would come out of the direct contract expense as a project manager and receiving a W2.

I went two to three months sometimes without getting paid but still I worked and I secured contracts as I agreed. Regrettably Mr. Gray passed away on August 19, 2008 after a battle with colon cancer. This is also a Vietnam veteran, prisoner of war with only 50% disability but he served his country proudly.

He died in August 19, 2008 even though the company was still full and compliant. At the CVE the representatives there, the staff there recommended that the company be awarded because the wife was still the president of the company that the wife be able to run the company with the full service disabled veterans status for nine years, just as you would if you were 8(a) status or any other small business status that you would receive. That was the recommendation from the staff at center for veteran enterprises. That agreement was denied by Ms. Karen Zusanbuay and also Gail Warner, both at the center for veteran enterprises. Therefore however even though he wasn't 100% disabled as your policy states it has to be 100% disabled that to me realize that regardless of how much you serve or dedicate to your country if you're not 100% disabled your service means nothing. It's insignificant. Mrs. Gray was devastated during her husband's death. As I attempted to perform the duties as an officer of the company I contacted and telephone personally visited the center for veteran enterprises to resolve any matters regarding the verification process.

Ms. Zusanbuay and Ms. Warner refused to speak to me on several occasions. Their reply was we only speak to the veteran. I had never encountered that before in the history of working in corporate America. I had never been in a company that an authorized officer

could not conduct business on behalf of the company if officers, members, etc. Mrs. Gray was instructed by the Center for Veteran Enterprises even in their advice to say find another service disabled veteran; put him as a CEO of your company and when you get your SBOB status again. They didn't care about the training, the education skill, and ability; just find another FDVOB to put in your company. Mrs. Gray tried to comply. She - - her niece who is - - and also service disabled veteran to come into the company. They were instructed that the individuals had to make more than my salary as a senior vice president and also and there was no grace period to do this, to get this company back in compliance. Therefore with no grace period, with no budget in the current contract for this abrupt move we were forced to - - Graysmith in order for Graysmith to get back into compliance.

I remember the center for veteran enterprises representatives speaking at meetings that I attended around the state and said we are here for the veterans, spouses, veteran dependents of all eras. We have an open door policy. I'm a veteran dependent, my father is a Korean War veteran, and he served his country proudly. I'm a caregiver also, I was a caregiver for my father, I was a caregiver for the Grays when they almost lost their home and were evicted in the streets when nobody would provide service for them and I also serve, I have some people with me now that I also house service disabled veterans that are homeless, women with their children, for no pay up to 12 months. I'm even with - - salary because I believe in my assignment in serving these veterans and serving the people just as my parents have done.

Therefore my father served, my brother served, I buried him, his wife works at the VA hospital in Richmond. I served them very proudly and I'm glad in what I do. Then also after you do that and even when families are withdrawn and they're spouse is leaving them or whatever else I still make sure that they're provided for. That was my assignment even to Mrs. Gray. That's why I'm still here today and I believe that because of the situation that happened and the decision that was made as a result and we did have contracts and we served very well, but as a result of this one decision to make we were now in noncompliance, we could not accept the contracts that we have successfully bid and also were getting ready to get awarded for which was the \$7.7 million at Hampton VA hospital. We could not accept that contract because now we were out of compliance. We did not have that verification letter that we had already qualified for over two years ago. And we had not gotten it.

Therefore as a result Graysmith Construction has failed, we are now in debt, we owe taxes to the IRS, we're going to work with you to get it paid, we have very good employees, we have very good employees that we had to let go December 14th just before Christmas with no answers. We couldn't even say anything but we're sorry. We couldn't do it. We worked very hard. I lost my job, my kids can't go to

school, my class A construction license is not valid anymore, my credibility and my reputation is tainted, I can't do construction, I'm an engineer by trade and by degree and I've done everything that we could in compliance for this and so therefore it has caused great harm. By next week, by May 26th I will be out of my house, my daughter who's an electrical engineering major at Northrop State University will be out on the street with me along with my other two children who are honor students and college students right now attending. This is not just affecting me; it's affected everybody that's in there. It's affected April Gray, it's affecting Graysmith Construction, there's a business owner in here right now, service disabled veteran my issue is that you are a service disabled veteran and your son of a service disabled veteran which is - - . Your daughter who's also in your business is not a veteran. Okay but what happens in that succession if both of them die before she dies? It's her position no more significant than the veterans that she's served as an officer beside. So I would like that question to be answered why did they not award this when we were in the first round and had met all the qualifications of that.

My job as an employee of this company is to do just that. To make sure that it's in full compliance before we do anything. I did. We have our business plan and we followed it thoroughly. We have a training plan so that even with Mrs. Gray when she came on board even as President to take over Mr. Gray we put her in a training program. One of the things I saw in your program it said contracting and I wrote it here because I want to read it. I just want to go back to there. Real quick; my last point.

Capital, contracting, counseling. The capital that we could once get because we did have our credit ratings and everything else and the capital we have \$50 million bonding because we qualify because we know what we're doing as a woman-owned company even after Mr. Gray passed away. We had the qualifications to get capital. To date we can't do that. Contracting we had contracts, we earned over \$880,000 in contracts with Mr. Gray with us working together in the day-to-day operations of the company, to date we have zero and we are in default.

MS. VASSAR: Your issue is with veterans affairs is - - .

MS. HOLMES-TURNER: Verification and the process of verification and award because we met all the compliance requirements for verification.

MS. VASSAR: And don't want to lose that because that's we can deal with.

MS. HOLMES-TURNER: And after the verification because had we gotten the verification we would have been able to do whatever. Asked in succession is the second thing because there's no succession planning allowance and the particular thing even though you have them

in your operation agreement—

MS. VASSAR: I don't want to lose what you're asking. You're going to have some roundtables and right now it's more important that I hear the regulatory issues so that we can deal with that.

MS. HOLMES-TURNER: The regulatory issue is your verification process, the fact that a veteran has to be 100% disabled.

MS. VASSAR: Did you put that on your form?

MS. HOLMES-TURNER: I believe so; 100% disabled in order for the company to maintain that service disabled veteran status for nine years, those are the two key things and you have people and you have companies that are suffering nationwide with this situation and I thank you for your time.

MS. VASSAR: Thank you. Mr. Walker I heard you click on. Are you still there?

MR. WALKER: Yes I'm here.

MS. VASSAR: You are ready to testify I assume?

MR. WALKER: Yes I am. Thank you. Good morning. My name is Jacque Walker and I'm the CEO of Southpole [phonetic] Walker International. First I'd like to thank Ms. Esther Vassar the national ombudsman for SBA and her team for providing me with the opportunity to deliver remarks at this important forum. It's my hope that my comments combined with the remarks of the many impressive entrepreneurs gathered here today can help influence a Federal procurement environment where small businesses can compete fairly.

Southpole Walker is a small African American owned company. Since we were founded in 1996 we have provided management and IT solutions to U.S. Federal Government and commercial clients worldwide. While a significant amount of our business portfolio has been with the U.S. government particularly the U.S. Agency for International Development we have also had the privilege to support commercial products in over 15 African countries.

Southpole Walker is also a former 8(a) company having exited the program in 2008. The particular issue I wish to discuss today involves the U.S. Agency for International Development or USAID. In 2006 Southpole Walker was awarded a five year contract to support USAID's Limited Excess Property Program. This important program helps disseminate excess U.S. government equipment to private volunteer organizations or PVOs and nongovernmental organizations or NGOs around the world.

This equipment valued at over \$30 million annually helps support much needed relief and development efforts globally. Since the start of this contract Southpole Walker has performed exceptionally. There has not been one documented issue of poor and/or inadequate

performance. As a matter of fact or performance has been cited as quote unquote exceptional by USAID as our client and also by the many PVOs and NGOs that participate in the Limited Excess Property Program as well as by members of congress and other interested parties.

The success of Southpole Walker's effort supporting the Limited Excess Property Program is due primarily to the work of our project manager, Mr. Wolford Walker whom I'm proud to say is my father and he has over 20 years experience supporting this program and over 40 years of professional management experience.

USAID has decided to in-source the limited the excess property program without adequate explanation. This effectively takes the Limited Excess Property Program out of the 8(a) program. According to USAID they do not consider this to be taking a requirement out of the 8(a) program because the requirement is being in-sourced. What I find unusual is that the two contract personnel supporting the Limited Excess Property Program who are employees of Southpole Walker were not extended offers to continue support of this program even if for only a period of transition.

If the performance of the contractor has been called quote unquote exceptional by USAID and the PVOs and NGOs that participate in this program why would USAID not want to retain the expertise and institutional knowledge of Mr. Walker and his colleague. If it is not performance what can it be? If it cannot be cost as the Limited Excess Property Program is funded at less than \$300,000 per annum. If it is neither performance nor costs what could it be? In any event this is another issue for another day.

The contract awarded to Southpole Walker in 2006 by USAID was for five years. The structure of the contract was for one base year which is 2006 plus two 2-year options so an option for 2007 and 2008 and an option for 2009 and 2010. The contract is based on calendar year.

Prior to 2010 USAID would execute each option year one year at a time. According to a USAID contract specialist who worked on prior Limited Excess Property Program contract options and I quote we were required to get an approval from higher management to exercise the option years for all institutional support contracts which stands effective even today and we got the approval for one year only end quote.

As a matter of practice our contract option supporting Limited Excess Property Program were executed one year at a time. On January 13th, 2010 we were notified in writing by USAID that the second year of contract option 2 was quote unquote legally unavailable to be exercised and that our contract would expire on January 30th, 2010 instead of December 31, 2010. The position of USAID was that

because Option 2 was partially exercised for 2009, there was no option left to exercise for 2010. Please note that the same issue regarding a 2-year option period existed for 2000 and 2008 and that these years were executed one year at a time.

USAID has not adequately explained to Southpole Walker why this could be done for 2007 and 2008 and not similarly done for 2009 and 2010. It is also important to note that in the same USAID letter dated January' 13th, 2010 Southpole Walker's performance was described as quote unquote exemplary.

This is not a performance issue. Since this January we have discussed this matter with USAID's office of small and disadvantaged business utilization ombudsman and others. Unfortunately we have been unable to reverse USAID's decision regarding Southpole Walker's limited excess property contract; regarding the early termination of the Southpole Walker's Limited Excess Property Program contract.

We have considered legal action against USAID; however a cost benefit analysis of this situation revealed that Southpole walker that we would spend more money on legal fees than we could probably recover through the extension of our contract through December 31st, 2010.

At this time we seek no remedy from USAID; however as an interested small business I encourage SBA to look into the current contracting practices at USAID as they pertain to small businesses. An objective look at the contracting data suggests USAID is not doing enough to create an open and fair competitive environment for small businesses. It is also important to note that USAID according to data compiled by SBA is one of only two Federal agencies to not meet any of its small business contracting goals. Please draw your own conclusions. Our interest is as a concerned small business. I understand that USAID is not accountable to me; however they should be accountable to someone, someone be it SBA, the U.S. Congress, etc., should hold USAID accountable and ask the difficult questions. Thank you.

MS. VASSAR: Thank you Mr. Walker. Mr. Walker spoke to us in our office and - - issue so that if any other small business has the same concerns that he could express it for them. Thank you.

MR. WALKER: Thank you very much for the opportunity.

MS. VASSAR: Our next commenter is Mr. Cleveland White.

MR. CLEVELAND WHITE: Good morning. My name is Cleveland White. I represent Kite Technical Services. My background is army aviator served in Afghanistan, Iraq. Today I'm here to testify about the small business office that - - is Virginia. On many occasions we have tried to do business with the aviation office at Fort Eustis was denied access to actually to speak to someone in army about doing business.

I'm currently doing business with ODU and BC University on robotics unmanned air vehicles. The reason why I'm here today is just to find out why the army small business office will not give us access to do business with the military down there. I would also like to see a reorganization of the small business office and the way they do business, their thinking is decades behind and as we move forwards new technology they need to change the way they do business. That's all I have to ask.

MS. VASSAR: Thank you. Is Mr. Baldwin here? Mr. Baldwin? Stacy Stanfield are you on the line? He was to call in at 11:30. While we wait from Mr. Stanfield and Ms. Baldwin there were two persons who were interested in making comments however they did not because they were afraid of retaliation from the Federal government and I felt that important to read into the record.

One of the agreements that our office and every Federal agency that they have a no retaliation policy so - - not supposed to happen but I want it known - - that - - companies did not - - because of that feeling.

One thing that the - - they knew that we would have a fair and transparent government and those of us who represent the government are dedicated to doing all we can to assure that that process is in place. That's why we have the cooperation of these agencies, these Federal agencies that have come to talk to you all afterwards and meet with you all if you have any issues and I think that - - they're being - - are meant to benefit you and not to hurt you. I just wanted to say that. Who just came on? Hello? Why don't we take a break? We have scheduled this hearing for two hours, we're a little ahead of time but it shows efficiency here so we'll just stretch for a few minutes and we'll come back - - comment and I'm sure that the small businesses here are being informed about the concerns of their fellow business - - .

MALE VOICE: We'll rejoin again in ten minutes.

[END 164589-1]

[START 164_589-2]

MS. VASSAR: Stacy Stanfield are you on the line?

MS. STACY STANFIELD: I am.

MS. VASSAR: We would like to hear your testimony now please. Thank you and thank you for calling in.

MS. STANFIELD: Thank you. The agencies that I am having issues with are the United States Department of Transportation and the Department of Minority Business Enterprise.

MS. VASSAR: Stacy that's the Virginia Department of Minority Business Enterprise right?

MS. STANFIELD: Right. I'll begin with a timeline and then I'll tell you a few things about myself. Worley Ready Mix Incorporated submitted their original application for request to be certified as a disadvantaged business enterprise on July 23rd, 2008. There were numerous emails and calls made to inquire about the status of the application with a tremendous lack of response on the part of the DMBE, the Department of Minority Business Enterprise. On November the 18th, 2008 a formal complaint was filed on the DMBE by email to Governor Tim Kane. Most all of my communication in regards to the application was with Mr. Willy Miles [phonetic]; however when he was pressed for information he stated all that he did was sign off on the application and that Mr. Derek Brown was handling the application.

I contacted Mr. Brown on November the 19th, 2008 and he was very irate with me because of the complaint that had been filed. He stated that he had spent the majority of his morning responding by either phone or email to all the people I had complained to.

On November 20th, 2008 two days after my complaint Worley Ready Mix was denied certification by Mr. Willy Miles.

MS. VASSAR: Ms. Stanfield you know that we do not deal with state regulations. I'm going to allow you a couple of minutes to express this because the Department is represented here. But we deal with Federal agencies. Alright?

MS. STANFIELD: Right and my appeal is with the Federal agency and that's where my appeal is at. It's with the U.S. Department of Transportation.

MS. VASSAR: Okay. I just wanted to make sure.

MS. STANFIELD: So basically on January the 6th, 2009 Worley Ready Mix appealed the denial to the U.S. Department of Transportation. On June 29th, 2009 Joseph Austin Associate Director of the U.S. Department of Transportation remanded the file back to the DMBE because the onsite interview was never conducted.

Michael J. Russell performed the onsite interview on August the 4th, 2009 and recommended Worley Ready Mix for approval as a DDE. On August 28th, 2009 Evelyn Henson Certification Specialist in an interoffice memorandum also recommended Worley Ready Mix for certification. Even with both recommendations Mr. Willy Miles again denied Worley Ready Mix on September 23rd, 2009 and on December the 11th, 2009 Worley Ready Mix again appealed the decision of the DMBE and currently awaits their decision.

This is a timeline of basically the beginning of my process to the very end. Then I have another paragraph of just general information about the recommendations for the Department and things of that nature.

MS. VASSAR: If you will give us that I'd appreciate it.

MS. STANFIELD: Okay. Basically I am a third generation business owner and I am a white female. I have 17 years experience in the highway construction industry working my way up from secretary, flagger, pipe layer, equipment operator, estimator, human resource coordinator to eventual president of the great family owned company and the backbone of my American heritage.

I have grown to understand the importance of organizational skills being on time, doing what you say, and standing by what you do. My issue is with the DMBE and how unorganized this department has been during my application process. During my two year battle with this department for certification the one good thing to come out of the ordeal is the placement of Angela Chang in the position as the Director of Operations for this agency. She created a document process tracking system for the DBE certification applications which hopefully will alleviate the painful process I went through of being told pretty much nothing about my application.

My other issue is with Mr. Miles himself who has been none other than discriminatory to my company and recommendations for ways to improve the department I totally disagree with this gentleman having the authority to singlehandedly approve or deny a firm because he has total disregard to any recommendation of his colleagues. With such authority you may as well terminate all other positions because it truly doesn't matter what they suggest he will do what he wants because he even stated that all he does is sign off on the certifications.]

It is very upsetting to think that my tax dollars go to employ someone who sits in an office and signs off on an application and nothing more. Not once in my conversations with him could he verify or deny any information that I asked about even though in one case he signed a letter requesting additional information but when asked about the documents he couldn't answer any of my questions but had me contact someone else.

My suggestion would be to have a panel make the decisions on certification and that majority would rule. That gives each individual from the onsite interview to the certification specialist a voice and a say in the determination of certification. In the end these are well educated individuals that understand the requirements for certification and they shouldn't be denied a say in the process by a superior who doesn't respect what they do. I appreciate being given the opportunity to explain my case and to voice my opinion and hope that in the end a favorable decision is made in my case and that future applicants will have a much smoother enjoyable process.

MS. VASSAR: Thank you Ms. Stanfield and we have your comment on file right?

MS. STANFIELD: Yes ma'am.

MS. VASSAR: We will submit that to the Department of Transportation. I know the DMBE has transportation on contracting opportunities so we'll be happy to get the files. Do you want to deal with the time - - as well as the process itself?

MS. STANFIELD: I'm sorry I can't you very well.

MS. VASSAR: I notice you said this started several years ago so you are concerned about the time it took to process things as well as the treatment that you received during processing?

MS. STANFIELD: Yes ma'am that's correct.

MS. VASSAR: Okay. Thank you very much, are you going to stay on the line?

MS. STANFIELD: Yes I will. Thank you.

MS. VASSAR: Someone else just clicked in could you tell me who that is?

MS. MELISSA MARSHALL: Melissa Marshall, EPA.

MS. VASSAR: Okay. Thank you. EPA's on the line. Is Mr. Baldwin in yet? Mr. Witt Baldwin has just walked in and he will read his testimony now.

MR. WITT BALDWIN: Thank you very much Ms. Vassar, Mr. Boone [phonetic], and James Williams thank you for your patience. I saw the article in the paper so I want to thank you for coming out. I want to talk about one specific instance of a Federal regulatory issue but I'd also like to talk about the totality of it if that's okay. I can do it in five or six minutes for sure.

A quick background about my company; the company's name is HeloAir it was established in 1993. We manage and own and fly helicopters all throughout the east coast. We have 22 employees and we've not let anybody go throughout the latest downturn which we're really proud of. We have provided all of our employee's healthcare and their families since the inception up to today and as I said 22 employees there both full and part-time.

My specific issue is we bought a helicopter in November of 2008 from Bell Helicopters; a Bell 407 purchase price was 2.3 million. In order to use it in commerce we're required by the FAA to have it on our FAR Part 135 Certificate. We get the helicopter, the FAA comes over and inspects it, approves it for return to service, and it goes into service.

Our particular inspector had decided of his own volition, this is a local guy in the Richmond Flight Standards District Office that the fire extinguisher that the manufacturer and the FAA Type Certification Office said was correct, he said was incorrect. So he

would not allow us to use it in commerce because he didn't sign off on putting in our operations specifications. It took us six weeks to do the research to prove him wrong and in that six weeks we had the debt service which was about \$40,000 on the aircraft and the insurance which was about 10,000 but were unable to fly it in commerce which would mean flying people from Point A to Point B so the cost of that six weeks downtime was about \$50,000 in costs. We explained it to the FAA the answer was tough. We have been a certificated DOT regulated authority since 1994 so this wasn't our first time at the dance.

He got his information from what he calls an obscure advisory circular which had no regulatory authority, nor any legal authority, its just an advisory for regulator and he read it completely incorrectly so that set us back. That's my one specific Federal regulatory issue that was a very big challenge to us.

That story and this was kind of what I want to focus on today Ms. Vassar is that that's the tip of the regulatory iceberg. There are so many regulating authorities for small businessmen. We fall in between. American Airlines has compliance officers and human resources agents where most of us businessmen and women they do that themselves so its very difficult to ensure that we comply with all this and I just compiled a brief list of things that if I were to start my business again today state, local and Federal agencies I'd have to contact before I ever started to do business, and this is just a snapshot list; the State Corporation Commission, the United States Department of Labor, the Henrico County Division of Revenue, the Virginia Employment Commission, OSHA, the Henrico County Planning Department Permitting Office, Virginia Department of Aviation, the FAA, the FMCSA, the Department of Homeland Security, the Transportation Security Administration, the Virginia Department of Motor Vehicles, the Henrico County Fire Marshall, the EPA, the State - - Control Board. It's just a list of an agency that we have to go through and once we get that certification from all of those agencies and that's just the snapshot. That's a five minute snapshot not a 20 minute. The things that we have to keep up with as businessmen there's a whole another list and I'll just give you a few of those, NASE Codes, CAGE Codes, NCS 90s, NCS 150s, Tri-annual Aircraft Registrations, strain injury prevention programs for OSHA, Federal/State tax returns, personal property tax filings, the list goes. We have to do all of this while we are trying to run a business, employ people, create revenue, pay taxes, innovate, service, manufacture, create, employ and expand.

My testimony today really is about each one of those regulating agencies certainly has its purpose but when looked at in its totality for a small business man if a 23-year-old man or woman came up to me today and said would you start a small business again I would tell them you lost your mind.

The things I've talked about, I didn't talk about customers

and products and services and revenue. These are things we as small businessmen have to do before we ever talk to an attorney about the way we should set up our business, talk to an insurance agent about what insurance coverage are we supposed to have or should we have, do we have pollution coverage for the EPA, do we have workman's comp, and there's also a list of taxes that we pay and some of which we pay before we create revenue. Again, my spin today is that in totality being a small businessman today is a very, very difficult. We accept a lot of risk, we do a lot of work to create these things because we're entrepreneurs at heart, it's what we want to do but every day literally every day it becomes more difficult for us.

I appreciate the time to tell you that and I think my comments are going to get put on the record. Any questions?

MS. VASSAR: No and I - - leave your correspondence with - - waiting for you. I think you do express some concerns that a lot of small businesses express because I know that you're not the only one - - and you're not dealing with on Federal agency, you're dealing with all of the local all the way to Federal so I share your pain having owned two small businesses.

MR. BALDWIN: Thank you and I probably shouldn't say this since this is on tape. I don't know that any small businessman from 10 to 50 or 10 to 100 employees can be certain that we are complying with every regulation. There are just so many out there. Just the FMCSA that regulation is like 700 pages long so we asked for an audit from the MCSA and we had 23 things that we had to do that we had no idea were even relevant to us. That's just one example of what's the next thing we may or may not be doing.

MS. VASSAR: We have several Federal agencies represented here today - - testimony and they know that I have said to them we want to make sure that small businesses comply because they want to and sometimes they just don't know what is required of them. That's what we're working towards at the Federal level is make you aware of what needs to be done and helping you to comply rather as punishing you.

MR. BALDWIN: That's exactly why we called for the audit from the Federal Motor Carrier Safety Administration which we're going to do with a new facility with OSHA, come in show us where the lines aren't painted; show us where the water spots aren't so we can correct those. I will say this to the Federal agencies, to a man and women, they're good people. They do genuinely want to help you but in its totality sometimes it's overwhelming for the small businessman or woman. Thank you.

MS. VASSAR: We have one other comment. Reed Integration.

MR. STEVE WADDELL: Good morning Ms. Vassar and Mr. Boone, I appreciate your time today. The issue I wanted to bring up is on behalf of Reed Integration. We're an 8(a) woman-owned SDB in Hampton Roads but also I represent the Tidewater Government Industry Council as the 8(a) Small Business Rep which is, I'll let Jeff explain a little bit about the task of TGIC in a moment if I could.

The issue involves contracting and specifically sole-source contracting with 8(a) companies. Right now the word we are getting when we attend our TGIC meetings and I can't quote government officials that attended meetings because it's a non-attribution environment is they are being told to avoid sole-source procurements, 8(a) procurements included because of the directive from Obama Administration regarding going to a more competitive environment.

I've believe that's been mistaken because I believe that's more towards the Halliburton's and all the other big companies that involved high risk. There's a lot of money at risk. For an 8(a) procurement it's limited to 3½ million for services so it's only so much risk on behalf of the government agency.

I believe and I think this would help greatly is if the SBA could issue a letter and it would go out to all government contracting officials that would clarify this and state specifically that the 8(a) sole-source requirements are valid and a good means of procuring government services in need and does not violate the need for competitive by the government as issued by the letter or whatever it was that the Obama Administration put out.

I really think that we need that help as 8(a) companies.

MS. VASSAR: Thank you Mr. Reed, Mr. Reed expressed that comment - - I assured him that that was not the intent of President Obama's decision to send out a directive that hurt 8(a) firms at all and he agreed. So for the record we both agree on that.

MR. WADDELL: Just one moment to the task Tidewater Area Service Contractors is an organization in Hampton Roads that facilitates dialogue between government agencies and government representatives and small business, large business and so on. I'd like to ask Jeff Bruner from Joint Forces if he could just give a brief statement about Task and TGIC.

MR. JEFF BRUNER: Thank you. My name is Jeff Bruner I'm the Contract and Acquisition Manager at the Joint Forces Command and at the end of my quick remarks I'll just make one mention of some potential business opportunities at Joint Forces Command and our process for businesses to do business with us.

As Mr. Waddell said in Tidewater we have the Tidewater Association of Service Contractors who elect large, small, 8(a), educational institution and at-large members to come to our monthly

government/industry council meetings. I am the government co-chair; we have a government industry co-moderator of the council every month. We have standing committees on legislative affairs where we track what's on the horizon, we have a standing committee on small business affairs, we have a standing committee on acquisitional workforce issues because we certainly recognize some of the issues that industry has with government is because of the condition of the governments acquisition workforce in this particular day and age. We also have a standing committee on contracting approaches and techniques.

The bottom line is a non-attribution forum where anyone whether you're an elected member from the Tidewater Association of Service Contractors, the Tidewater Government/Industry Council meetings are open to all and we have a monthly dialogue on issues in the areas that I just described or anything that someone would like to bring to the council's attention so we can try to take some remedial action with some of the agencies or contracting offices that folks may be having difficulty with. Again, it's a non-attribution forum but as a government member I have no problem going on record to let folks know that if you do business in Tidewater you have that organization to represent you on a non-attribution basis for some of the matters that I heard about this morning or the type of matters I heard about this morning.

The only other thing I'd like to say very quickly at Joint Forces Command we have an industry outreach program, an industry engagement program, any company we deal largely in high-tech services and research and development, as well as IT hardware/software requirements but any company that's interested in anything we do look at the Joint Forces Command website on the button partnering with us you'll get a description of our process but the bottom line is you can submit a capability statement, a white paper, an unsolicited proposal to business at jfcom.mil and we will vet your submittal across the enterprise to all of our directors and subordinate commanders for any potential business opportunities that we may have or we can alert you to. Thank you.

MS. VASSAR: Thank you certainly Mr. Bruner and I will tell you that's what these meetings are about; not just complaints but collaboration among Federal agencies and Mr. Bruner and Mr. Waddell have committed to being a part of another forum I'll have in the Tidewater area so that we can deal with some of your issues. I'll turn it over to Ron now. We've completed our formal hearing process.

MALE VOICE: That concludes the testimony.

MS. VASSAR: Thank you all so much and I appreciate all - - .

[END 164_589-2]