

Statement of

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

on behalf of

The Associated General Contractors of America

to the

**Subcommittee on Economic Development, Public Buildings and
Emergency Management**

Committee on Transportation and Infrastructure

U.S. House of Representatives

For a hearing on

**“Doing Business With Government: The Record and Goals for Small,
Minority and Disadvantaged Businesses”**

September 17, 2009

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THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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**Statement of Mr. Joel P. Zingesser
Grunley Construction Company, Inc., Rockville, Maryland
Subcommittee on Economic Development, Public Buildings and Emergency
Management
Committee on Transportation and Infrastructure
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My name is Joel Zingesser of Grunley Construction, where I lead the firm's strategic planning, business development, and sustainable design/construction efforts. For over 50 years our firm has specialized in renovations, restorations, and modernizations of large-scale government and commercial buildings, including office, laboratory, and educational facilities. In addition we construct new facilities and additions to existing buildings for both public and private sector clients.

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

Contracting Reform Issues

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

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

AGC would like to discuss issues surrounding a wide range of concerns and recommendations we have for improving the Federal market.

Subcontracting Goal Achievement

Current SBA rules require small business set-asides and establish small business goals to be met by large businesses to assure that significant portions of federal procurement dollars flow to small business firms. But the rules for keeping track and measuring the actual flow of dollars to small businesses do not take into account the actual amounts that flow down below the first tier level of subcontracting. Within the construction industry, the bulk of the work is performed by subcontractors who in turn hire second tier and third tier firms to perform elements of the project. Under the current system, if an other-than-small business is included as a first-tier subcontractor, the prime contractor is not asked to report further dollars that are going to small businesses below the first tier subcontractor. This is because the contracting agency is not allowed to take credit for those dollars towards its goals. Allowing prime contractors to report small business subcontracting at all tiers would demonstrate true small business participation on a federal contract and would show more accurately how the construction industry supports and is dependent upon small businesses.

The current system leaves prime contractors with subcontractor choices for larger projects that are beyond the capacity (especially bonding capacity) of small businesses, but it is well understood that much of the work will flow down to small businesses. Changing the scoring system will let prime contractors determine the best mix of large and small subcontractors according to capacity and availability. Accurately accounting for small business participation helps federal agencies better meet set-aside goals established by the Small Business Act and helps prime contractors get credit for small business participation in government contracts.

The shift to Electronic Subcontractor Reporting System (eSRS) by the federal government provides the opportunity to correct this problem. The system has the capability to track and report small business subcontractors on multiple tiers, yet current rules do not encourage prime contractors and their subcontractors to account for total small business participation at all tiers. AGC recommends Congress direct a change to the system through legislation to potentially help all parties track the dollars flowing to all small businesses.

Contract Bundling

Contract bundling is the process of consolidating contracts into a single contract that limits small business participation which is especially detrimental to the construction industry, because it is predominately comprised of small businesses. Increasingly, the federal government is awarding ever-larger contracts for public works and infrastructure projects. These mega-projects reduce bidder competition and aggregate project risk, and may challenge surety capacity, sometimes necessitating percentage or partial bonds instead of bonds covering 100 percent of the contract price. The Federal government needs to find ways to unbundle extraordinarily large construction projects, so more contractors can compete for these projects and so these projects are fully covered by the performance and payment bonds. Reducing government contract

bundling would increase competition on federal procurements and would enhance benefits to the government and provide added opportunities for small businesses to attain government construction contracts.

Federal Acquisition Workforce

Recruitment, retention and training of the government workforce should be a high priority for both government and industry. As you can already see from our concerns about contract bundling, an understaffed federal acquisition workforce is suffering from the pressures of an already challenging procurement environment. The shrinking acquisition workforce is an ongoing problem and will exacerbate as the number of procurements continues to grow.

According to the Government Accountability Office, the government bought \$400 billion in goods and services in fiscal 2006 with only 20,000 contracting specialists in the workforce.

About one federal acquisition professional in eight already is eligible to retire, and that will rise to more than half the workforce by 2016. The average retirement eligibility for contracting professionals will increase from 29 percent in FY 2011 to 50 percent in FY 2016.

We fear that the Federal government workforce challenges may only get worse in the coming years. In order for the government to meet its many missions, it will have to do a better job of recruiting, hiring and training new employees. Given that the government's purchase of goods and services is at an all time high, it is essential that the government acquisition positions be fully staffed. This problem needs to be addressed in the near-term to avoid the negative ripple effects that a strained workforce can have on all facets of contracting.

HUBZone Program

The stated goal of the HUBZone program is to "increase employment opportunities, investment and economic development" in the low income and/or high unemployment areas that meet the federal definition of a "historically underutilized business zone." AGC understands the broad social objectives of the program but not how the Small Business Administration (SBA) currently applies the program to the construction industry. We are also greatly concerned about several recent reports issued by the Government Accountability Office (GAO) investigating the HUBZone program. These reports have found that this program is fraught with waste and abuse. Given these concerns, we would prefer Congress suspend the program. Short of this action, we have developed several recommendations designed to improve this program and would be pleased to share our recommendations with the Committee.

Alaska Native Contracting

Alaska Native Corporations (ANCs) were established in order to settle many long-standing land claims and to foster economic growth for Alaska and Alaska Natives. In 1986, legislation was passed to allow ANCs to participate in the SBA's 8(a) program for socially and economically disadvantaged businesses. Under this legislation, ANCs have extraordinary and unique preferences over other 8(a) firms that have contributed to reduced Federal contracting opportunities for traditional small businesses. The General Accountability Office has issued several important reports and recommendations on improving this program and we urge the SBA to implement them as soon as possible.

Agency Consistency

As a matter of policy, AGC recommends that agencies with large regional offices continue to work to promote the implementation of uniform agency policies that will provide greater consistency in the construction process. Many of our members have repeatedly found wide variances in regional operations, contract administration and administrative practices. Such can produce serious administrative and communication problems and can discourage contractors from continuing to work in the Federal market. We are pleased that the General Services Administration has worked very hard to ensure consistent communication and consistency between regional offices over the past several years and hope that trend continues into the future.

Project Labor Agreements

At the outset, AGC wishes to explain its overall position on PLAs. AGC neither supports nor opposes PLAs *per se*. What AGC strongly opposes is *government-mandated* PLAs on any publicly funded construction project. AGC is committed to free and open competition in all public construction markets and believes that publicly financed contracts should be awarded without regard to the labor relations policy of the government contractor. AGC believes that neither a public owner nor its representative should mandate the use of a project labor agreement that would compel any firm to change its labor policy or practice in order to compete for or to perform work on a publicly financed project. AGC further believes that the proper parties to determine whether to enter into a PLA and to negotiate the terms of a PLA are the employers that employ workers covered by the agreement and the labor organization representing workers covered by the agreement, since those are the parties that form the basis for the employer- employee relationship, have a vested interest in forging a fair and stable employment relationship, and are authorized to enter into such an agreement under the National Labor Relations Act.

AGC has submitted comments to the July 14, 2009 proposed rule (FAR Case 2009-005) that would implement Executive Order 13502 ("Use of Project Labor Agreements for Federal Construction Projects") to determine the effect this proposed rule will have

on Federal procurement policy and the cost of doing business with the Federal government. We would be pleased to share a copy of our comments to the Committee.

Conclusion

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