

VIRGINIA SMALL BUSINESS PARTNERSHIP

Testimony

Before the Joint House Small Business and
Oversight & Government Reform Committee's

**Examining Problems with Forcing Companies to Disclose Political Records before
Competing for Government Contracts**

May 12, 2011

Chairman Issa, Chairman Graves, Ranking Members Cummings and Velazquez, members of the Committee, I want to thank you for holding this hearing today and for allowing the Virginia Small Business Partnership to submit this testimony for the record. My name is Paul Miller and I serve as the Chairman of the Virginia Small Business Partnership, which is a small business advocacy group designed to work with state leaders on policies and issues that support small businesses.

I applaud the President's efforts to bring about change to our political and legislative processes. I agree with the President that in order to create change government activity should be more transparent. Where I strongly disagree with the President is how you get there. I would urge caution before we issue any more regulation that may look good on paper, but in practicality, has the opposite effect. The draft Executive Order issued by the White House will do just that.

I'd like to focus my remarks on four areas:

- 1) Duplication;
- 2) Contracting shouldn't be a political tool;
- 3) Pay-to-play; and
- 4) Intimidation.

Duplication

At a time when Congress and the Administration are trying to eliminate red tape and duplication within the Federal government this Executive Order creates more red tape and duplication. The fact is a database already exists for those who have given campaign contributions to candidates and/or political parties. The Federal Election Commission (FEC) already requires candidates and parties to disclose this information. Creating another similar database would be duplicative and a waste of tax-payer dollars.

The draft Executive Order requires a contractor go back two years and disclose their contributions. What happens if a small business forgets to list a contribution? Will they be fined or penalized for doing so? How is this information going to be checked and verified? Will the contracting officer now have to go to the FEC database and confirm the contractor's information is accurate? It seems like we're adding a lot of extra work on an agency workforce that is already overworked due to a shortage of contracting officers to meet current demands.

Is this new database going to be used by the media or interest groups to create stories based on innuendo or what they perceive to be fact? The last thing a small business can afford is to find their name and company embroiled in a scandal that may not be fact based or true. Small businesses don't typically have deep pockets to fight these types of allegations.

As I stated earlier, the information currently being sought by the President through this Executive Order is already available through the FEC.

Contracting shouldn't be a political tool

As a small business owner myself and someone who works closely with small businesses throughout the contracting process, I can tell you this Executive Order will create a true pay-to-play system. When our small businesses currently bid on contracts they don't go through a member of Congress, they respond to a Request For Proposal put out by an agency. To add a new requirement that a contractor disclose their campaign donations is going to set in motion a system that will dictate who gets contracts and who doesn't based in part, on which candidates or parties they contribute to.

The Executive Order states and I quote "It is incumbent that every stage of the contracting process – from appropriation to contract award to performance to post-performance review – be free from undue influence..." This Executive Order will have the direct opposite effect. This Executive Order will now open the door for undue influence to be a major element of how contracts are awarded. We can say contracting officers aren't political, but we'd be kidding ourselves. This is Washington and you would be hard pressed to find someone who doesn't have political views and where having access to this new information wouldn't play a role in their decision-making. The fact is, there will be those contracting officers who will use this information in determining who gets a contract and who doesn't. It would be naïve to think otherwise. Even if it happens just once; its one too many times.

Our system of government isn't perfect, but it is the best in the world. Our procurement system isn't perfect either and there are a lot of changes that could and should be made to make it more effective and efficient, but implementing this Executive Order would do more harm to a system already in desperate need of change. Change is good, but this Executive Order would take us in the wrong direction.

We should do everything we can to keep politics out of our procurement system. This Executive Order is dangerously close to changing the procurement landscape and not for the better.

Pay-to-play

I'm not naïve to think pay-to-play situations haven't occurred in our procurement process, but this is not like an Earmark where a small business requests the contract from a member of Congress. The procurement process allows for protests and other avenues to weed out this type of activity. The last thing we can or should do is turn our procurement process into an extension of our political system.

I have thought long and hard about this and I cannot find one single reason why a contracting officer would need to know who a small business owner made campaign donations too on a competitive bid. I can find lots of reasons why this information would be helpful if you're trying to identify those who support your policies or politics. Having this information could take your bid from the bottom of the pack straight to the top.

I know we might hear that this would never happen. I could say the same about Earmarks, yet these are now banned because of the perception of pay-to-play occurring. Why would it be unreasonable to think the same wouldn't happen under this Executive order?

Intimidation

Finally, this Executive Order could be construed to be a political tool used to keep businesses from exercising their Constitutional right of free speech by keeping them from donating and participating in our political system. This Executive Order will make company's think twice about getting involved in our political process for fear that them giving to the "wrong" party or candidate will cost them from winning a contract. Small businesses have enough challenges in the procurement process that this Executive Order would cause an even bigger challenge. I could see a situation where a company who hasn't been successful starts giving to the "right" party or candidate and thus starts winning more contracts. What then? Are we going to say they automatically did something wrong? Are we going to investigate them? Are we going to drag them through the mud and destroy their name? This can and will happen if this Executive Order is implemented. A lot of what if's in the above statement, but these are real possibilities that need to be resolved before any Executive Order is issued and implemented.

As I mentioned earlier, if the President's goal is to ensure our procurement system is free from influence, then don't implement this Executive Order. The minute this goes into effect is the moment we have created a political pay-to-play procurement system. I don't believe the President wants this.

What I continue to be troubled by is the unwillingness of the President to sit down with the right people and talk about these issues. If the President would just reach out to us and work with us we could come up with a better way to keep undue influences out of the procurement process. If the President would only work with the lobbying community on Earmark reforms and lobbying reforms we could create a system that eliminates the loopholes and makes these processes cleaner and more transparent. You can't simply rely on academics and people who have no real world experience with these issues. You need to hear from small businesses who feel the challenges everyday of competing in the federal market. We would welcome the opportunity to work with the President on transparency issues that make sense and achieve everyone's goals.

Conclusion

Transparency is a good thing, but this Executive Order takes it to a whole new level. There is no reason why a contracting officer would ever need to review the political contributions of any contractor. This should have no bearing on which company can best serve the needs of the federal agency. The only reason to collect this information is to punish those who an Administration doesn't agree with or to reward those businesses who have been "loyal" to an Administration.

There comes a time when we can go as far as we can with transparency before we overreach and create a system with costly unintended consequences. We are at that moment with this Executive Order and I would urge the President to reconsider such action. Let's not turn our procurement process into a pay-to-play system. Let's not turn our procurement system into a system that rewards or punishes based on your political leanings. Let's not force anyone out of the federal market through the possible intimidation this Executive Order will create. And, let's not duplicate a process that is already in place at the expense of tax-payers.

If this Executive Order is implemented as currently written, I assure you we will be back here in very short order because someone will be accused of pay-to-play. It may not be true, but the accusations will be made and the investigations will begin. This risk is way too high for any small business and could force many to get out of the federal market all together. Let's focus our attention on helping small business succeed in the federal market instead of adding more hurdles to that success. This Executive Order will only send a strong signal that only those who support an Administration need apply for federal contracts.

I want to thank you for the opportunity to submit this statement for the record. I would welcome the opportunity to answer any questions you or your staff may have on this very important topic. I can be reached directly at (703) 383-1330 or via e-mail at pmiller@mwcapitol.com.