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Testimony

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DISASTER RECOVERY

Federal Contracting in the Aftermath of Hurricanes Katrina and Rita

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ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

Chair Landrieu, Ranking Member Snowe, and Members of the Committee:

I am pleased to be here to discuss small business participation in Gulf Coast rebuilding after Hurricanes Katrina and Rita. Federal agencies directly awarded \$20.5 billion in contracts nationwide between fiscal years 2005 and 2011 for recovery efforts related to these hurricanes.¹ These contracts are subject to federal procurement regulations and, in most cases, are generally subject to certain goals to increase participation by small businesses.

My statement today is based on a report we issued in July 2010, which discussed the extent to which Gulf Coast small businesses received federal contract funds for recovery efforts, with data on contract funds updated through fiscal year 2011 where possible.² More specifically, I will discuss (1) the amounts that small businesses nationwide and small businesses in four Gulf Coast states received directly from federal agencies through contracts for relief and recovery efforts related to Hurricanes Katrina and Rita; and (2) the extent to which four agencies—the U.S. Army Corps of Engineers (Corps), Department of Homeland Security (DHS), Department of Defense (DOD) excluding the Corps, and General Services Administration (GSA)—monitored subcontracting accomplishment information as required for selected contracts.³

¹In this statement, the obligations data we report for fiscal year 2011 are through September 1, 2011, except for the Department of Defense (DOD) and the Army Corps of Engineers (Corps). Due to a 90-day delay in reporting to the Federal Procurement Data System-Next Generation (FPDS-NG)—the governmentwide contracting database that collects, processes, and disseminates official statistical data on federal contracting activities—data for DOD and the Corps are as of June 1, 2011.

²GAO, *Hurricanes Katrina and Rita: Federally Funded Programs Have Helped to Address the Needs of Gulf Coast Small Businesses, but Agency Data on Subcontracting Are Incomplete*, [GAO-10-723](#) (Washington, D.C.: Jul. 29, 2010).

³In this statement, unless otherwise noted, we use the acronym DOD to refer to the Department of Defense, excluding the Corps. We are reporting on the Corps and the rest of DOD separately because at least three supplemental appropriations measures for DOD activities relating to Hurricane Katrina relief specifically directed certain funds to the Corps for its disaster relief activities. See Pub. L. No. 109-62, 119 Stat. 1990 (2005); Pub. L. No. 109-148, 119 Stat. 2680 (2005); and Pub. L. No. 109-234, 120 Stat. 418 (2006).

In summary,

- Small businesses located in four Gulf Coast states (Alabama, Florida, Louisiana, and Texas) received about \$2.7 billion (13.3 percent) of the \$20.5 billion federal agencies directly awarded nationwide in contracts for hurricane recovery between fiscal years 2005 and 2011. Small businesses in the rest of the United States received about \$2.6 billion (12.9 percent).
- The Corps and the rest of DOD—two of four agencies that awarded the most in federal contracts for hurricane recovery—could not demonstrate that they consistently were monitoring subcontracting accomplishment data for 13 of the 43 construction contracts for which subcontracting plans were required. We recommended that the Secretary of Defense take steps to ensure that contracting officials with the Corps and other DOD departments consistently comply with requirements to monitor the extent to which contractors were meeting subcontracting plan goals. DOD did not concur with the implication that its contracting personnel did not enforce requirements. We recently received information from both DOD and the Corps that indicates that they have initiated actions to address our recommendation.

For both our July 2010 report and the updates included in this statement, we analyzed data on contracts directly awarded by federal agencies for Katrina- and Rita-related recovery efforts between fiscal years 2005 and 2011.⁴ Although we could not independently verify the reliability of these data, we reviewed system documentation, conducted electronic data testing, and compared the data with supporting documentation when available. On the basis of these efforts, we determined the data on the amount of federal contract dollars received directly for Hurricanes Katrina and Rita recovery efforts to be sufficiently reliable for purposes of our review. We identified all construction-related contracts that had subcontracting plans for the four agencies that awarded the greatest amount of Katrina- and Rita-related contract dollars in fiscal years 2005–2009 (Corps, DHS, DOD, and GSA). We interviewed officials from the four agencies to gather additional information on subcontracting award reports. The work on which this statement is based was performed from

⁴Because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

September 2009 to September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

When the President declares a state of emergency after a natural or other major disaster, the declaration gives the federal government the authority to engage in various emergency response activities, many of which federal agencies provide through contracts with private businesses, including those for debris removal, reconstruction, and the provision of supplies.⁵ Federal agencies' contracts with private businesses, whether made in the normal course of agency operations or specifically related to a natural disaster declaration, in most cases, are subject to certain goals to increase participation by various types of small businesses. The Small Business Act requires that the President set a governmentwide goal each fiscal year for small business participation for the total value of all prime contracts awarded directly by an agency.⁶ Additionally, the Small Business Act sets annual prime contract dollar goals for participation by five specific types of small businesses: small businesses, small disadvantaged businesses, businesses owned by women, businesses owned by service-disabled veterans, and businesses located in

⁵See Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288, as amended, 42 U.S.C. §§ 5121 – 5204c.

⁶15 U.S.C. § 644(g). Under this provision, the President must annually establish governmentwide goals for, among other things, procurement contracts awarded to small business concerns. The governmentwide goal for participation by small business concerns must not be less than 23 percent of the total value of all prime contracts awarded for each fiscal year. As stipulated in the Small Business Act, procurement goals are established as a percentage of the total value of all contracts directly awarded by the federal government in a fiscal year.

historically underutilized business zones (HUBZone).⁷ The Stafford Act also requires federal agencies to give contracting preferences, to the extent feasible and practicable, to organizations, firms, and individuals residing in or doing business primarily in the area affected by a major disaster or emergency.⁸

The *Federal Acquisition Regulation* (FAR) implements many federal procurement statutes and provides executive agencies with uniform policies and procedures for acquisition. For example, the FAR generally requires that executive agencies report information about procurements directly to the Federal Procurement Data System-Next Generation (FPDS-NG), a governmentwide contracting database that collects, processes, and disseminates official statistical data on all federal contracting activities that are greater than the micro-purchase threshold (generally \$3,000).⁹ This system automatically obtains from other systems or online resources additional information that is important to the procurement, such as the contractor's location.

The FAR also requires agencies to measure small business participation in their acquisition programs. A small business may participate via prime contracts—which are contracts awarded directly by a federal agency—or

⁷15 U.S.C. § 644(g). The Small Business Act defines these businesses as follows: (1) Small businesses are those that are independently owned and operated and are not dominant in their field of operations. (2) Small disadvantaged businesses must be owned and controlled by socially and economically disadvantaged individuals—such as African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, or Native Americans. These owners must have at least a 51 percent stake in the business. (3) Women-owned small businesses must have at least 51 percent female ownership and the management and daily operations of the concern must be controlled by women. (4) Service-disabled veteran-owned small businesses must be owned—also at least 51 percent—by one or more veterans with a service-related disability. In addition, the management and daily operations of the business must be controlled by one or more veterans with a service-related disability. (5) HUBZone small businesses must have their principal offices physically located in these historically underutilized business zones, which are economically distressed metropolitan or nonmetropolitan areas—that is, areas with low-income levels or high unemployment rates—and must employ some staff who live in these zones. The small business regulations implementing the Small Business Act further define these businesses. 13 C.F.R. §§ 121.401–121.413.

⁸42 U.S.C. § 5150.

⁹FAR 4.603(b). In 2006, the FPDS-NG reporting threshold was raised from \$2,500 to \$3,000. 71 Fed. Reg. 57364 (Sept. 28, 2006). In 2008, the reporting threshold for FPDS-NG was set at the micro-purchase threshold for most types of contract awards. 73 Fed. Reg. 21773 (Apr. 22, 2008) (interim); and 74 Fed. Reg. 2712 (Jan. 15, 2009) (final).

through subcontracts.¹⁰ Any business receiving a contract directly from a federal executive agency for more than the simplified acquisition threshold¹¹ must agree in the contract that small businesses will be given the “maximum practicable opportunity” to participate in the contract “consistent with its efficient performance.”¹² Additionally, in general, for acquisitions (or modifications to contracts) that (1) are individually expected to exceed \$650,000 (\$1.5 million for construction contracts) and (2) have subcontracting possibilities, the solicitation shall require the apparently successful offeror in a negotiated acquisition to negotiate a subcontracting plan that is acceptable to the contracting officer, and each invitation for bid shall require the bidder selected for award to submit a subcontracting plan to be eligible for award.¹³ The subcontracting plan must include certain information, such as a description of the types of work the prime contractor believes it is likely to award to subcontractors, as well as goals, expressed as a percentage of total planned subcontracting dollars, for the use of small businesses.¹⁴ Generally, contracts that offer subcontracting possibilities and are expected to exceed the monetary thresholds that we have previously mentioned are to include certain clauses.¹⁵ These clauses require that for contracts that have individual subcontracting plans, prime contractors generally must semiannually and at project completion report on their progress toward reaching the goals in their subcontracting plans. Generally, contractors that have individual subcontracting plans are required to report on their subcontracting goals and accomplishments twice a year to the federal government through the Electronic Subcontracting Reporting System (eSRS), which is a governmentwide database for capturing this

¹⁰FAR 44.101 defines a subcontractor as “any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.”

¹¹Effective October 1, 2010, the simplified acquisition threshold for most acquisitions was increased from \$100,000 to \$150,000. 75 Fed. Reg. 53,128 (Aug. 30, 2010). FAR 2.101.

¹²FAR 19.702, 2.101.

¹³This dollar threshold was changed to \$550,000 (and \$1 million for construction contracts) on September 28, 2006 and again, effective October 1, 2010, to the current levels. 71 Fed. Reg. 57,363 (Sept. 28, 2006); 75 Fed. Reg. 53,128 (Aug. 30, 2010).

¹⁴These and other aspects of the small business subcontracting plan requirement are set forth at FAR Subpart 19.7.

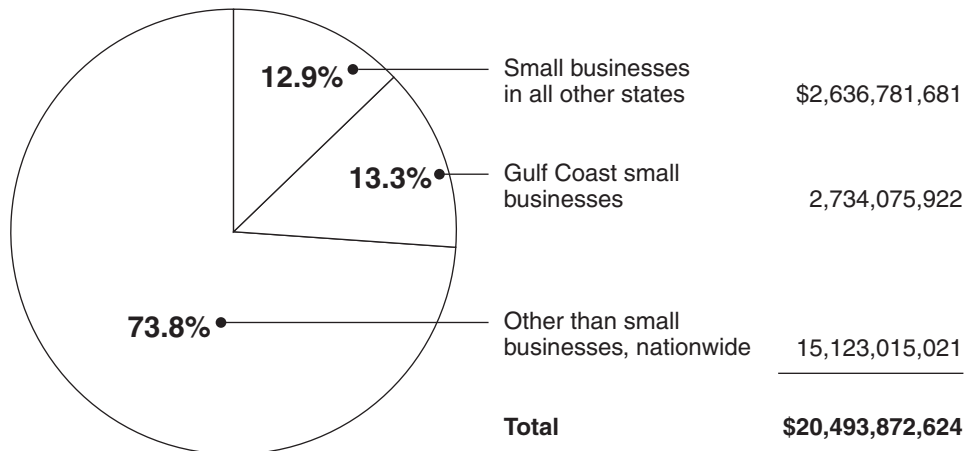
¹⁵Contracts that are below the simplified acquisition threshold, are personal services contracts, are to be performed entirely outside of the United States, are set aside, or are to be accomplished under the 8(a) program do not require this clause.

information. Furthermore, the agencies' administrative contracting officers are responsible for monitoring the prime contractors' activities and evaluating and documenting contractor performance under any subcontracting plan included in the contract. The contracting officer is tasked with acknowledging receipt of the reports submitted to eSRS.¹⁶

Federal Agencies Awarded a Significant Amount of Contract Dollars Directly to Small Businesses in Gulf Coast and Other States

Federal agencies directly awarded \$20.5 billion in contracts nationwide between fiscal years 2005 and 2011 for recovery efforts related to Hurricanes Katrina and Rita. Of this \$20.5 billion, small businesses located in four Gulf Coast states received approximately \$2.7 billion (13.3 percent), and small businesses in the rest of the United States received about \$2.6 billion (see fig. 1).

Figure 1: Total Amount of Federal Contract Dollars Provided for Hurricanes Katrina- and Rita-Related Recovery Efforts, Fiscal Years 2005-2011



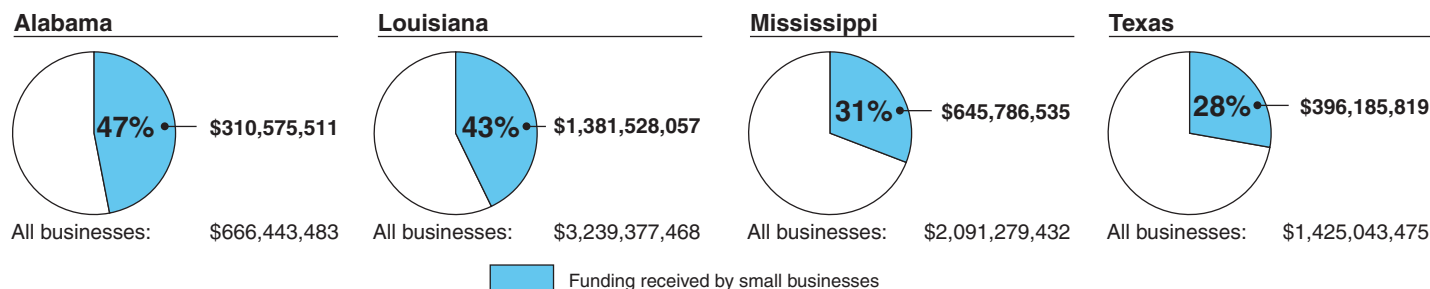
Source: GAO analysis of FPDS-NG data.

Note: The dollars reported are in obligations. The data are as of September 1, 2011, however; because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

¹⁶Effective July 16, 2010, the FAR was updated to include additional guidance on eSRS, including reporting time frames for subcontracting accomplishment reports and clarification of when a contracting officer shall reject a report as not adequately completed. 75 Fed. Reg. 34260 (June 16, 2010); 73 Fed. Reg. 21779 (Apr. 22, 2008).

Among the four Gulf Coast states in our review, Louisiana small businesses directly received the greatest amount of federal contract funds, about \$1.4 billion. However, Alabama had the highest proportion (47 percent) of total prime contract dollars awarded to small businesses (see fig. 2).

Figure 2: Contract Dollars Awarded Directly to Gulf Coast Small Businesses and Businesses of All Sizes in States Primarily Affected by Hurricanes Katrina and Rita, Fiscal Years 2005-2011



Source: GAO analysis of FPDS-NG data.

Note: The dollars reported are in obligations. The data are as of September 1, 2011, however; because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

In the four states, the amount of federal contract funds directly awarded to specific types of small businesses for Hurricanes Katrina- and Rita-related recovery efforts varied (see fig. 3).

- **Small disadvantaged businesses:** Of the approximately \$2.7 billion that went directly to small businesses, about \$804 million (29 percent) went to small disadvantaged businesses. Small disadvantaged businesses in Louisiana received the greatest amount of federal contract funds awarded to this category (more than \$420 million).
- **HUBZones:** Small businesses in HUBZones directly received about \$560 million (20 percent of federal contract funds directly awarded to Gulf Coast small businesses). Small businesses in HUBZones in Louisiana received the greatest amount (about \$292 million).
- **Women-owned small businesses:** About \$381 million were directly awarded to women-owned small businesses (14 percent of all federal contract funds directly awarded to Gulf Coast small businesses). Women-owned small businesses in Louisiana received the greatest amount (approximately \$182 million).

- *Veteran-owned small businesses*: About \$270 million (or 10 percent of federal contracts directly awarded to Gulf Coast small businesses) went to this category. Veteran-owned small businesses in Louisiana received about \$180 million, the most in the Gulf Coast states.

Figure 3: Contract Dollars Awarded Directly to Various Types of Small Businesses for Hurricanes Katrina- and Rita-Related Recovery Efforts, Fiscal Years 2005-2011

Dollars in millions

	Total awarded to small businesses	Dollars and percentages of small business totals awarded to different types of small businesses			
		Disadvantaged	HUBZone	Women-owned	Veteran-owned
Alabama	\$310.6	24% \$75.1	25% \$76.4	12% \$36.0	2% \$5.4
Louisiana	1,381.5	30% 420.4	21% 291.9	13% 182.2	13% 179.5
Mississippi	645.8	34% 219.2	24% 154.7	19% 120.6	9% 56.9
Texas	396.2	23% 89.3	9% 36.9	11% 42.1	7% 28.6
Total (Gulf Coast)	\$2,734.1	29% \$804.0	20% \$559.9	14% \$380.9	10% \$270.4

Source: GAO analysis of FPDS-NG data.

Note: Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive. Therefore, percentages cannot be totaled across columns because under SBA guidelines, contracting dollars awarded to businesses can be counted in more than one category. For example, a small disadvantaged business owned by a woman can be counted as both disadvantaged and women-owned. The dollars reported are in obligations. The data are as of September 1, 2011; however, because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

Corps of Engineers and DOD Could Not Demonstrate Consistent Monitoring of Subcontracting Information for Selected Contracts

The Corps and DOD could not demonstrate that they consistently were monitoring subcontracting accomplishment information as required. As we have previously discussed, subcontracting plans are generally required for construction contracts (or modifications to contracts) that are expected to exceed \$1.5 million and that have subcontracting possibilities. The FAR states that subcontracting plans must include assurances that prime contractors will report on their progress toward reaching their subcontracting goals.¹⁷ Generally, contracts that offer subcontracting possibilities and are expected to exceed the monetary thresholds above are to include certain clauses. In general, these clauses require contractors to submit these reports semiannually and at project completion. The Corps and DOD use these reports to monitor contractor performance under subcontracting plans. We reviewed the 57

¹⁷FAR Subpart 19.704 (a)(10)(iii).

construction contracts that the Corps, DHS, DOD, and GSA awarded directly to large businesses in fiscal years 2005– 2009 for hurricane-related recovery and that were listed in FPDS-NG as having subcontracting plans. The Corps awarded 29 of these contracts but could not provide subcontracting accomplishment report information for 11. DOD awarded 14 contracts and could not provide information for 2 (see table 1). Without these reports, either in eSRS or paper form, contracting officials lacked a key tool for monitoring contractors’ performance under subcontracting plans.

Table 1: Status of Subcontracting Accomplishment Information for Hurricanes Katrina- and Rita-Related Construction Contracts Having Subcontracting Plans, as of July 2010

Agency	Number of construction contracts listed in FPDS-NG as having subcontracting plans	Number of construction contracts for which agencies were unable to demonstrate compliance with requirements for monitoring subcontracting accomplishment information	Percentage unable to demonstrate compliance
DHS	5	0	0%
GSA	9	0	0
DOD	14	2	14
Corps	29	11	38
Total	57	13	23%

Source: GAO analysis of agency contracting data.

Note: Two additional construction contracts were listed in FPDS-NG as having subcontracting plans; however, these contracts were miscoded and did not require subcontracting plans and, thus, were eliminated from the universe of contracts we reviewed. Additionally, we eliminated another two contracts because Corps officials told us that they did not contain subcontracting plans because limited or no subcontracting possibilities existed for those contracts.

As of 2005, all contractors with subcontracting reporting requirements related to contracts with civilian agencies were generally required to submit, with some exceptions, summary subcontract reports into eSRS, a Web-based governmentwide subcontracting system that allows contractors to submit and agency officials to review subcontracting accomplishment reports electronically rather than using paper forms. DOD implemented eSRS incrementally and began primarily relying on eSRS for subcontract reporting as of 2009. The development of eSRS was intended to create more visibility and transparency into the process of gathering information on federal subcontracting accomplishments.

In addition to requirements for contractors to submit subcontracting accomplishment information, the FAR requires that agency contracting officers review subcontracting plans for adequacy and take action to enforce the terms of the contract if notified that the contractor is failing to meet its commitments under their subcontracting plan.¹⁸ Agency administrative contracting officials are required to provide information to the contracting officer on the extent to which the contractor is meeting subcontracting plan goals and to notify the contracting officer if the contractor is failing to comply in good faith with the subcontracting plan.¹⁹ In determining whether a contractor failed to make a good-faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. When considered in the context of the contractor's total effort in accordance with its plan, failure to submit contracting accomplishment reports may be considered an indicator of a failure to make a good-faith effort.²⁰ These requirements were in place prior to the 2005 hurricanes and have continued in the eSRS environment. New requirements were added to the FAR in April 2008 that additionally require that contracting officers acknowledge receipt of or reject the subcontracting accomplishment reports submitted by contractors in eSRS.²¹ In addition, DHS, GSA, DOD, and the Corps have agency guidance that spells out the contract administration duties necessary to monitor contractor compliance with subcontracting plan reporting requirements. Without subcontracting accomplishment information, contracting officials at the Corps and DOD lack a key tool used to monitor contractor performance under subcontracting plans. In the absence of these reports, the Corps and DOD could not demonstrate that they were consistently monitoring contractor performance under the plans.

As we have previously noted, the Corps did not provide subcontracting accomplishment report information for 11 contracts and could not explain why the information was unavailable. DOD did not provide us with subcontracting information on 2 of 14 construction contracts we reviewed.

¹⁸FAR Subpart 19.705-4 and 19.705-6.

¹⁹FAR Subpart 19.706.

²⁰FAR Subpart 19.705-7.

²¹See footnote 16 of this statement.

DOD officials told us that after searching retained records, they could not find any paper or electronic subcontracting accomplishment reports. We concluded that without monitoring, the Corps and DOD were limited in their ability to determine the extent to which their prime contractors followed subcontracting plans. We recommended that the Secretary of Defense take steps to ensure that contracting officials consistently comply with requirements to monitor the extent to which contractors were meeting subcontracting plan goals, including requirements for contractors with subcontracting plans to submit subcontracting accomplishment reports. Once these reports are submitted, contracting officials should maintain and regularly review them to determine whether contractors have been following subcontracting plans. To ensure consistent compliance, DOD and the Corps small business offices should monitor such actions by contracting officials, as deemed appropriate. DOD did not concur with the implication that its contracting personnel did not enforce requirements. We recently received information from both DOD and the Corps that indicates that they have initiated actions to address our recommendation.

Chair Landrieu, Ranking Member Snowe, this concludes my prepared statement. I would be happy to answer any questions at this time.

Contacts and Acknowledgments

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