



Statement of Mr. Thomas DePace  
Chief Operating Officer Advance Sound Company

on behalf of the  
National Electrical Contractors Association

to the

Committee on Small Business  
Subcommittee on Contracting and Infrastructure  
U.S. House of Representatives

for a hearing on:

“Helping Small Businesses Compete: Challenges and  
Opportunities in the Federal Procurement  
Marketplace”

July 16, 2019

NECA is the voice of the \$171 billion electrical construction industry that brings power, light and communication technology to buildings and communities across the U.S. Our national office and 118 local chapters advance the industry through advocacy, education, research and standards development.

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**Committee on Small Business**  
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Thank you Chairman Golden, Ranking Member Stauber, and members of the Subcommittee for inviting me to testify today at this very important hearing. On behalf of the National Electrical Contractors Association (NECA), we greatly appreciate the opportunity to submit a statement for the record to the Subcommittee on Contracting and Infrastructure on "Helping Small Businesses Compete: Challenges and Opportunities in the Federal Procurement Marketplace." The subcommittee should be commended for holding this hearing to better understand the issues NECA contractors face on a daily basis and the ways in which simple solutions can bring about great change for their small businesses.

My name is Thomas DePace and I am the Chief Operating Officer of Advance Sound Company in Farmingdale, New York. My mother and father bought this company in 1988 and have worked for over three decades to transform our family owned business into an industry leader. Partnering with over eighty manufacturers in the industry, Advance Sound Company has become a premier distributor and integrator of quality audiovisual equipment and solutions.

After graduating from Marist College and joining the company in 2007, I've worked to expand the core competencies of Advance Sound Company from audiovisual systems to include network infrastructure, lighting control and automation, as well as access control and IP security systems. We've adapted our company to be ready for the ever-changing technological landscape.

We at Advance Sound Company are proud members of the National Electrical Contractors Association (NECA), where most recently our work on Molloy College's Barbara H. Hagan Center for Nursing Excellence was recognized as a 2017 NECA Project Excellence Award Winner. NECA is the nationally recognized voice of the \$171 billion electrical construction industry, that brings power, light, and communication technology to buildings and communities across the United States. Many of NECA's 4,000 member companies compete within the federal procurement marketplace and recognize its unique opportunities and are determined to reform the arena for the better.

## **Cash Flow**

The federal construction industry is riddled with challenges and opportunities; risk is inherent to this arena. Unfortunately, the federal marketplace is notorious for limiting our cash flow, which for contractors is the key not just to success, but to our survival. Payment terms for contracts have only gotten worse over time and many NECA contractors report horror stories of not receiving pay for 150 days or longer. It is facts like this that make contractors wary when entering into business with the federal government.

These delayed payments affect every aspect of our business. If there is no cashflow, companies like mine are unable to hire. Particularly as it relates to NECA contractors, employee benefits packages must be paid on a weekly basis with no leniency for how clients choose to pay or when they choose to pay. As a small business, it is a challenge to ensure our staff's checks will clear, especially when payments from the federal government can come over a hundred days delayed. At NECA, we have heard countless stories of companies unable to bid on projects due to delayed payments and limited liquidity. In turn, this means less competition on federal projects and ultimately decreased benefits for the federal government and the American taxpayer.

With cash flow issues in mind, there are three key areas which stem from this basic concept that can be addressed by the committee, namely (1) prompt payment of change orders, (2) decreasing the rate of federal retainage, and (3) mitigating risk by explicitly requiring bonding on public-private partnerships.

### **Prompt Payment of Change Orders**

Two years ago, NECA contractor Mr. Greg Long of Long Electric testified before the House Small Business Committee describing one of the most significant issues facing our contractors: the prompt payment and proper administration of change orders. A change order being an agreed upon declaration to alter the scope or work between the owner and contractor. These orders can be minute and simple, or varied and complex. Mr. Long's commentary along with the hard work of this Committee led to the enactment of the Change Order Transparency for Federal Contractors Act, H.R. 4754 (115<sup>th</sup> Congress), which requires federal agencies to list their practices on the payments of change orders and their history for doing so. While this legislation allowed for the protection of contractors on the front end by increasing awareness of potential risks, the crux of the problem remains unaddressed, that being the need for prompt payment for these changes in a project's scope.

A 2014 study by Michigan State University highlighted the perils of change orders and the limited leverage subcontractors hold in receiving prompt payment

for them. The study found that in some cases, contracting officers have neglected to pay a contractor for nearly 18 months. For a small business who makes limited profit off of federal contracts, unforeseen costs like change orders, combined with elongated payment terms, amount to an extension of risk well beyond what was initially agreed to when the contract was awarded.

Thankfully, through the leadership of Representatives Stauber and Veasey on this committee have recognized this issue and understand that requiring partial payment for unilaterally requested change orders is a major step towards alleviating the unnecessary risk many small construction contractors assume as the cost of doing business with the federal government. H.R. 2344, the Small Business Payment for Performance Act, which has broad support from a wide variety of construction industry organizations, is a common-sense solution requiring the federal government to recognize that their delayed payments have real world consequences for America's small businesses.

## **Decreasing Federal Retainage Rates**

On construction industry contracts, the federal government has the ability to hold up to ten percent of the contract price until satisfactory completion of the work. This process of withholding money from a contractor is commonly referred to as retainage and was originally intended to assure the prompt completion of work. While not all federal contracts require the use of retainage, the practice has caused many subcontractors to be wary of working with the federal government. Although retainage is viewed by some as a protective clause for the owner of a project, the sum is often passed down through the hierarchy of the construction contract inevitably laying upon subcontractors to cover the cost.

Processes like retainage lend themselves to the perspective of subcontractors who see themselves as acting as a bank. In the modern era retainage has fewer redeeming qualities and its costs are often built into contractor's prices. This ultimately makes their bids unacceptable to owners, or if they are awarded, the retainage fee has only increased the cost to the owner. In addition, if a subcontractor is burdened with this cost they ultimately limit their capital and extend the length of time before their business is fully able to recoup the costs associated with the job, thereby increasing their financial risk. Because of this, most state governments have moved away from a ten percent retainage fee and down to five percent or less.

To make matters worse, many subcontractors have experienced delayed repayments on retainage. In order to better protect themselves, subcontractors have increased legal representation to review contracts and have established dedicated accounts receivable staff members to monitor contract administration. Even with these resources, businesses like mine have only received approximately 85 percent of retained funds on all projects.

One immediate way to mitigate the degree of financial exposure from federal retainage is for the federal government to follow suit of state and local governments and lower the overall rate of retainage that federal contracting officers may charge. This would put more liquidated funds in the pockets of America's small businesses, and likely decrease the overall cost of federal construction projects.

## **Public Private Partnerships and Bonding**

As methods for delivering larger infrastructure projects continue to develop, one key component that must remain as an underlining assurance for contractors is bonding. The federal government for decades has provided protections not only for itself, but for the small businesses and their workers who interact with it through the use of bonding. With the increasing use of Public-Private Partnerships (P3s) on property owned by the federal government, the need to reform the 1934 Miller Act to unambiguously cover these types of contracts in the federal marketplace is clear.

As previously described, subcontractors bear an extensive amount of financial risk when completing work for the federal government. They hold responsibilities not only to their workforce but to the suppliers who require payment as well; the use of payment bonds is one of the few ways to ensure that these dependents are taken care of. These bonds are typically bound to a determined amount of time and held to a fixed interest rate and are the last line of defense for receiving payment when situations deteriorate.

Due to the administrative burden of P3s, these jobs are often extensive and significantly more complex than other federal works. This can make them more likely to experience a contract failure. The surety bonding requirements of the Miller Act have allowed for stability and protection in the federal marketplace for some eighty years and these safeguards should be reasonably expanded to include the innovative design of public private partnerships on federal property.

## **Conclusion**

As a contractor who has worked numerous federal construction projects, I am extremely encouraged by this subcommittee's efforts to better understand the challenges of the federal marketplace. Within the federal construction industry there are three key areas ripe for reform, most notably, the prompt payment of change orders, the lowering of federal retainage rates, and the requiring of bonding on public private partnerships. Each of these three areas holds a unique challenge to the federal marketplace that presents itself on a regular basis to the small business who choose to take them on.

Thank you for the opportunity to testify at this critical hearing. NECA and Advance Sound Company applaud the committee's unwavering support for small business contractors. Through your responsible and thoughtful leadership, we are optimistic that the federal marketplace can become a more attractive arena for America's small businesses.