

Statement of

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Construction, Inc.

on behalf of

The Associated General Contractors of America

to the

U.S. House of Representatives

**Committee on Small Business' Subcommittees on
Contracting and Workforce and Investigations, Oversight,
and Regulations**

For a hearing on

**“All Work and No Pay: Change Orders Delayed for Small
Construction Contractors”**

May 25, 2017

Cashflow and Schedule Impact

One of the greatest challenges contractors face with federal agencies' delays in processing change orders is the disruption of cashflow on the project. Cashflow is the oxygen that keeps the construction project

subcontract agreements between prime and subcontractors, it is clear to see how a prime contractor becomes stuck between a rock and a hard place when agencies fail to timely pay for change order work.

Often, to keep the project moving, small businesses self-finance government projects and work that needs to be done to complete the project, to avoid unnecessary Miller Act or payment bond claims filed by subcontractors and suppliers. It should come as no surprise that this adversely impacts our overall bonding capacity, which is necessary to pursue additional work and bid on other federal projects. Thus, begins a common sequence of events where untimely processing and payment of change orders on one project, prevents a small business from competing for additional federal projects. My company has been unable to bid on many projects, public or private, because our equity was tied up while waiting on change orders to be processed and paid. The result is a decrease in competition for federal projects, less efficient use of taxpayers' dollars, and fewer opportunities for small business. Additionally, these barriers prevent prospective construction companies from wanting to enter the federal market. The current state of change order processing has limited, and continues to limit, the pool of qualified contractors who desire to pursue work in the federal marketplace.

Contractors, especially small businesses like mine, can only self-finance these projects for so long. Slow payment impacts not only the prime awardee, but all lower-tier subcontractors. For example, I have an active project for the VA in Menlo Park, California to expand an existing parking lot. From September through December of 2016 there were 15 change orders totaling \$479,000. These change orders are undisputed by the agency, but as of today's testimony, some five months later, the work is done but my company has not received payment. Therefore, my subcontractor has not been paid for the work that was completed. Due to this, I am told by my subcontractor that his company is now under a U.S. Department of Labor investigation due to his inability to timely make payments into his employees' 401(k) retirement plan. This example is among many that shows the flow-down consequences small businesses face as a result of untimely process and payment of change orders. The impact is further magnified when you have the same subcontractor on multiple projects. The current state of change order processing has limited, and continues to limit, the pool of qualified contractors who desire to pursue work in the federal marketplace.

Untimely processing and payment of change orders makes it difficult to maintain a qualified and reliable workforce. It is detrimental to my employer-employee relationship when I must ask my workers to move between projects or lay them off because of such work delays or stoppages. I, and other small construction business, are far too familiar with the negative consequences of stoppages and delays. Stopping work due to indecision can lead to negative past performance evaluations issued by the federal agency against the contractor. Those negative evaluations play a role in whether the agency, or other agencies, will give the contractor another job in the future. Incidents such as those I have described, strains the relationships between prime contractors and federal agencies, between prime contractors and subcontractors, and adversely impacts the overall morale on a project.

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In federal construction, there are not always similar economic or ideological incentives to efficiently or