Statement of

Randall D. Gibson of Whitesell-Green, Inc.

on behalf of

The Associated General Contractors of America

to the

Subcommittee on Federal Workforce, U.S. Postal Service and the Census

Committee on Oversight and Government Reform

U.S. House of Representatives

For a hearing on

"Assessing Government's Use of Design-Build Contracts"

December 3, 2013

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 25,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's 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 Randall D. Gibson
Whitesell-Green, Inc.; Pensacola, Florida
Subcommittee on Federal Workforce, U.S. Postal Service and the Census
House Committee on Oversight and Government Reform
United States House of Representatives
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Chairman Farenthold and Ranking Member Lynch, thank you for inviting the Associated General Contractors of America (AGC)—of which I am a member—to testify before the subcommittee on reforms to the federal government's procurement of construction services through design-build procurement. My name is Randy Gibson. I am president of Whitesell-Green, Inc. (WGI)—a federal, small business construction contracting firm based in Pensacola, Florida that services the Southeast region. Since WGI's founding in 1970, we have constructed over 400 heavy/commercial projects—public and private—resulting in nearly one billion dollars of completed contracts. On the federal government side, WGI has completed numerous projects for the U.S. Army Corps of Engineers, Naval Facilities Engineering Command, the Air Force Civil Engineer Center, and Department of Veterans Affairs.

My company has participated in many federal agency design-build procurements. We have won some (approximately 50), lost some and (in more than 150 instances) decided not to compete in others.

I am here today to address:

1. Those design-build procurements that my company, and many AGC members, often decide not to compete for;
2. How H.R. 2750, the Design-Build Efficiency and Jobs Act of 2013, could help overcome some reasons contractors like my firm decide not to compete; and
3. How such reform legislation can possibly increase future competition for the benefit of taxpayers.

I. General Overview: Design-Build Construction Procurement

Federal agencies have a number of different options in how they can procure design and construction services that will, in turn, affect who performs the different stages of a project.
One of those options is DESIGN-BUILD. Under design-build procurements, a single entity—the construction and design team—submits proposals for both the design and construction of the project.

Design-build is different from the traditional construction procurement method—DESIGN-BID-BUILD. Under design-bid-build, the design work, i.e., final construction drawings and specifications, is completed under a separate contract for design. These separate design contracts are most often competed for and awarded to architect-engineer (AE) firms. The federal agency will then ask contractors to compete for the construction contact, based on the design documents completed under the prior, separate design contract.

AGC recommends that owners—both public and private—select the project delivery systems that best fit their particular needs but with due regard for their independent interest in an open and competitive construction industry. As such, AGC is project delivery system "neutral" and merely recommends the project delivery system that fits the owner's and project's needs. That stated, many federal agencies have come to prefer design-build for a number of reasons, including the improvements in time of delivery and efficiency inherent in reducing the number of "steps" in the procurement process. Also, as design-build has become established in the federal contracting industry, agencies, designers and contractors have learned to use the close-working relationships inherent with this contracting method to better address the particular project needs of the federal end-user client.

A. One-Step versus Two-Step Design-Build Procurement:

i. Congress Should Reasonably Limit One-Step Design-Build Procurements to Ensure Robust Competition

In general, there are two major types of design-build procurement:

1. Two-step design-build; and
2. One-step design-build.

AGC supports federal agency use of the two-step design-build procurement method as the preferred method over single-step design-build procurement for construction projects.

Generally, during the first step of the two-step design-build option, the issuing federal agency limits the proposal requirements to the qualifications of the offering design-build "teams." These qualification criteria are most often evidence of past experience with the specific facility type; client performance evaluations for that past work; and sometimes other performance criteria such as safety ratings, bonding, etc. Design-build teams are inclined to submit proposals for these relatively simple first-step opportunities, because this information is readily available in their company records and inexpensive to gather and present. As a result, the federal agency obtains a good quantity of qualified proposals to choose from and can be confident that they can select the best qualifiers for "second-step." Furthermore, the first-step review effort by the federal agency is similarly inexpensive, as they can quickly and easily judge the submitted qualification information.

In the "second step" of the two-step procurement the federal agency generally selects three or more teams to submit much more detailed technical proposals, including extensive and expensive design information. When the competing design-build teams know that they will be competing against a limited number of other teams in step two, they can justify the significant technical proposal expense when weighed against the "acceptable risk" of competing against ~~a~~ reasonable competition technical offers, and similarly controls their "review" expense and quality by being able to focus judging only the small number of finalists.

In the single-step design-build option, in contrast, there is no qualification "first round." Instead, all interested design-build teams must submit full proposals, requiring extremely large costs necessary for each team to prepare the technical and design documents (described in step two of the two-step option above). Design-build teams considering pursuit of a "single-step" proposal have no way to judge their prospects for success, as no team can be sure how many teams are pursuing the project. As a result, competition suffers because many qualified teams, especially small businesses like mine, choose not to incur these large costs to participate where perhaps 20 teams or more can offer. Why spend those proposal dollars for a 1 in 20 chance, when you can enter a two-step procurement, reach the second round and have a 1 in 5 or better chance of winning the award? Also, how does the government benefit from spending significant time and resources thoroughly evaluating all 20 proposals, some of which may be from unqualified teams?

AGC holds that agencies should strive to reasonably limit single-step design-build procurement to less complicated and less expensive projects, where very little design work is required for submission with the proposal.

ii. Recent Contractor Examples of Inappropriate One-Step Design-Build Projects

As my own anecdotal example of this dilemma, my company teamed with a large business firm to pursue a one-step aircraft maintenance hangar proposal (approximately $40 million in size). The technical submission requirements emphasized energy efficient design as the main selection criteria. Our team made sense, because my firm has extensive hangar experience and our joint-venture partner had extensive experience in high-efficiency energy system design and construction. Our team expended in excess of $100,000 in design and proposal costs, but our offer was not selected based in part on the government rating our qualifications lower than our competition. We later learned that more than 20 firms offered, meaning that if our expense was "typical," this proposal generated at least $2M of industry expense, most of which went unrewarded. The agency could have dismissed my team, and perhaps many others, on this analysis of our qualifications by way of a two-step approach, saving all of us much expense and wasted time, and saving themselves a lot of source selection review effort. In my case, this unsuccessful expenditure limited my opportunity to pursue other projects, both while working on this offer and afterwards as a result of the impact on our company budget for proposal "pursuit."

In addition, AGC has received anecdotal complaints from members over the years on this issue. Most recently, AGC members where particularly concerned about two expensive and complex projects: one at the U.S. Military Academy at West Point, New York and another at Fort Carson, Colorado. At the West Point project, the U.S. Army Corps of Engineers (USACE) issued a request for proposal for a $170 million project under one-step design-build procurement. Similarly, at Fort Carson, USACE solicited a $100 million barracks project under the one-step process. In both cases, AGC alerted USACE that the prohibitive cost of entry into such high dollar, complex one-step design-build competitions in conjunction with low odds of winning awards can serve to decrease the number of qualified teams, often eliminating small business participation in total.

To the credit of the USACE Headquarters, in response to industry concerns at the Fort Carson project in particular, the agency issued an Engineering and Construction Bulletin[1] in August 2012 to serve as agency-wide guidance for when the one-step design-build process could be used. However, AGC recognizes and respects that USACE implementation of reasonable and consistent policies across an agency with such a wide scope is a challenge. USACE is tasked with ensuring the safe, secure and efficient construction of the nation's military and civil works infrastructure and facilities at home and abroad across 38 District offices within 8 Divisions. In the case of this particular guidance, AGC members have seen some inconsistency between the Districts in policy implementation.

B. Final Round of the Two-Step Design-Build Procurement:

i. Congress Should Reasonably Limit the Final Round to Three to Five Construction and Design Teams

As previously noted, during the two-step design-build procurement process, a federal agency selects a limited number of finalists to enter the second-step of the competition and to submit full proposals with more complete—and more expensive—design materials and cost estimates. AGC has long held and supported the reasonable limitation of the second-step selection to three to five finalist construction and design teams. Such a range of finalists still allows for a sufficient and reasonable competition, allowing federal agencies and taxpayers to realize the benefits of robust competition without driving away qualified competition. As with the example of 20 proposals in the one-step design-build process, the less predictable the competition and the odds of success, the more likely qualified teams do not compete.

Like AGC, I strongly support full and open competition for the many contracts necessary to construct improvements to real property. I recognize that the reviewer might ask how AGC and I can still support full and open competition while arguably advocating for limiting competition during this second-step of design-build procurement? I respectfully submit that by limiting the finalists in the final round of the two-step procurement, federal agencies will help ensure that they receive pre-proposal packages from any and all interested and qualified construction and design teams, including small businesses like mine. Such predictability allows businesses to consider the odds of participating in an expensive proposal process, as opposed to the one-step procurement process. As a result, this defined competition certainty with less risky odds for success encourages greater competition in the first-step of the two-step design-build process.

II. H.R. 2750, the Design-Build Efficiency and Jobs Act of 2013

AGC is generally supportive of H.R. 2750, the Design-Build Efficiency and Jobs Act of 2013. This bill would address AGC's two design-build procurement concerns:

1. Reasonably limiting single-step design build procurements; and
2. Reasonably limiting the second-step of the two-step design build process to three to five finalists.

[1] http://www.wbdg.org/ccb/ARMYCOE/COEECB/ecb_2012_23.pdf

First, the bill limits federal one-step design-build construction procurements. Specifically, the bill would prohibit one-step procurements valued at or above $750,000. This is the same dollar threshold USACE Headquarters denoted in its guidance on design-build procurement in August 2012. While AGC generally believes that one-step procurements should be limited for all the reasons previously discussed, the association generally holds that the $750,000 threshold may be too low in certain situations. A dollar amount is an easy to state and administer threshold, but the decision to use a one-step design-build procurement process must also consider the type of project, its design and construction requirements, its uniqueness, and its degree of complexity. The contracting officer may need a reasonable degree of flexibility—but not unfettered discretion—to adjust the limitation upward when this factor applies.

Second, the bill effectively limits federal two-step design-build construction procurements to no more than five finalists, while allowing for a reasonable degree of agency flexibility. The bill balances these points by enabling the agency head to approve a contracting officer's written justification for requiring more than five finalists in an individual, two-step design-build procurement. Consequently, contracting officers still have the flexibility to have more than five finalists. However, as opposed to the current law where a contracting officer needs no written justification for making such a decision, this bill would mandate such written justification. Thereby, the bar is slightly raised, but the contracting officer's flexibility to successfully undertake any design-build two-step procurement remains intact.

In conclusion, AGC is generally supportive of H.R. 2750 as a means to improve competition in federal design-build construction procurements.

Thank you for this opportunity to provide the views of the construction contractor industry in this important matter.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Randall Duane Gibson
President
Whitesell-Green, Inc.
Pensacola, Florida

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2011. Include the source and amount of each grant or contract.

W912QR-12-C-0020
Design and Construction of SOF Rotary Wing Hangar
Ft. Campbell, KY
Award Date: 30 March 2012
Award Value: $34,350,000.00
50/50 Joint Venture with Caddell Construction Company (Montgomery, AL)

NAVMWR-13-C-0001
Ponta Creek Golf Clubhouse Expansion
NAS Meridian, MS
Award Date: 13 November 2012
Award Value: $1,486.000.00

N69450-13-C-1257
P655 BAMS Mission Control Complex
NAS Jacksonville, FL
Award Date: 14 August 2013
Award Value: $15,949,000.00

N40085-10-D-5333-0002
DESIGN-BUILD, RM12-1648, RM12-1650,
RM12-1652, RM13-0434, AND RM13-0435 BACHELOR QUARTERS RENOVATIONS FOR
BUILDINGS BH-441, BH-442, BH-443, BH-444, AND BH-445 AND DESIGN-BID-BUILD, RM09-
1853 Q3/BQ ENERGY & REPAIRS HVAC BH-423
NAS OCEANA, VIRGINIA BEACH, VA.
Award Date: 13 September 2013
Award Value: $15,435,000.00
50/50 Joint Venture with DPR Hardin Construction (Atlanta, GA)

N69450-13-C-0758
Design and Construction; Corry Station Youth Center
NAS Pensacola, FL
Award Date: 17 September 2013
Award Value: $3,706,000.00

N40085-10-D-5333-0002
Design-Build, RM 09-2817 Bachelor Quarters Renovations for
Buildings KL, KM, and KQ
Naval Station Norfolk; Norfolk VA
Award Date: 20 September 2013
Award Value: $20,195,000.00
50/50 Joint Venture with DPR Hardin Construction (Atlanta, GA)

N40085-13-D-7776
SMALL BUSINESS DESIGN BUILD, DESIGNBID-
BUILD MULTIPLE AWARD CONTRACT FOR NEW CONSTRUCTION,
RENOVATION, ALTERATION AND REPAIR FOR PROJECTS IN THE HAMPTON
ROADS AREA, VIRGINIA.
Award Date: 27 September 2013
Award Value: Pending / Open MACC Contract

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2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

The Associated General Contractors of America

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3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature: Randall D. Gibson **Date:** 25 November, 2013

RESUME

Name:	Randall Duane Gibson
Title:	President
Firm:	Whitesell-Green, Inc. (WGI); Pensacola, Florida
Experience:	28 Years with WGI; 12 years with other firms
Education:	Bachelor of Building Construction; University of Florida; 1973 Sigma Lamda Chi Scholastic Honorary
Licensure:	Certified General Contractor; Florida CGC0005256
Industry Service:	Associated General Contractors (AGC) Chairman; NAVFAC Committee Associated General Contractors (AGC) USACE Committee Construction Specifications Institute National Association of Industrial and Office Properties Rotary International

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BIOGRAPHY

Born:	April 02, 1951; Pensacola, FL
Married:	Kristie (Garrett) Gibson; 36 years
Children	John Warren Gibson Chaplain U.S. Navy Served in Afghanistan with Marines; now billeted at Oceana NAS; Virginia Beach, VA Clayton Wade Gibson; (former) USMC (Reserve) Force Recon Served in Iraq
Church:	Olive Baptist; Pensacola