

THE IRS CONTRACTS WITH STRONG CASTLE, INC.

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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THE IRS CONTRACTS WITH STRONG CASTLE, INC.

Wednesday, June 26, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:04 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Duncan, Jordan, Walberg, DesJarlais, Gowdy, Woodall, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Connolly, Duckworth, Kelly and Davis.

Staff Present: Alexia Ardolina, Assistant Clerk; Jen Barblan, Counsel; Kurt Bardella, Senior Policy Advisor; Richard A. Beutel, Senior Counsel; Will L. Boyington, Press Assistant; Molly Boyd, Senior Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; Ashley H. Callen, Senior Counsel; Steve Castor, General Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Carlton Davis, Senior Counsel; Kate Dunbar, Professional Staff Member; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Deputy Chief Counsel, Oversight; Justin LoFranco, Digital Director; Mark D. Marin, Director of Oversight; Ashok M. Pinto, Chief Counsel, Investigations; Laura L. Rush, Deputy Chief Clerk; Jonathan J. Skladany, Deputy Chief Counsel, Investigations; Rebecca Watkins, Deputy Director of Communications; Meghan Berroya, Minority Counsel; Susanne Sachsman Grooms, Minority Chief Counsel; Jennifer Hoffman, Minority Press Secretary; Elisa LaNier, Minority Deputy Clerk; Dave Rapallo, Minority Staff Director; and Donald Sherman, Minority Counsel.

Chairman ISSA. The committee will come to order. The Oversight Committee's mission statement is that we exist to secure two fundamental principles: First, Americans have a right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn obligation is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts

to the American people and bring genuine reform to the Federal bureaucracy.

A few days ago the acting IRS Commissioner, Danny Werfel, issued a 30-day assessment on his plan of action for the future of the IRS. The report stated that in many instances across the IRS, we had efficient, effective management, or effective management that is leading positive organizational performance.

Unfortunately, we are here today because failures within the IRS are not isolated to just Tax-Exempt Division. The revelation that a company called Strong Castle was able to acquire more than \$500 million in potential contracts, or in contracts for potential sales, with no previous track record completely undermines the IRS narrative that just one branch or department within the IRS failed the American people.

Our report, we believe, shows a cozy relationship between Strong Castle's president and the IRS Deputy Director for Information Technology Acquisitions, Greg Roseman, and it is the heart of this issue. Included in the—included in our report are exchanges of text messages that we believe are shockingly inappropriate, and in some cases offensive.

Furthermore, the fact that Mr. Castillo was able to successfully manipulate the system—and we are not alleging a crime—but successfully manipulate the system to acquire contracts exposes staggering vulnerability in the IRS's acquisition process and jeopardizes billions of taxpayer dollars in this situation.

Quite frankly, we are not sure that we have criminal element here, that we have criminal violations. What we are sure of is that the intent of Congress and the stated intent of this and each administration before has been thwarted.

The intention of, without a doubt, that disabled military veterans receive preference flies in the face of a small injury in 1984 while attending the Military Academy Prep School, one so minor that it had no effect on college football participation for years to follow, and that took 27 years to conveniently ask to have this put in as a disability not because of a true disability or inability to perform a job, but, in fact, in order to qualify for a preference statement.

Additionally, the use of HUBZones, and in this case one that was a legacy HUBZone that actually the Verizon Center and the other parts of Washington, D.C., are moving out of that into thriving areas; the use of that in order to gain a contract and then creating absolutely no jobs within that district that were directly related to or in support of this \$500 million contract.

Our investigation is still in its infancy. Today we are working with the IG and hope to work with others within the IRS to end this problem. As we speak, many of these contracts continue to be in force. And perhaps that's the most distressing is that the IRS officials immediately—excuse me—initially denied and then repeated their denial that there was a problem. They failed to take action after this was brought to their attention, and the IRS is still allowing a \$266 million contract with Strong Castle to stand.

The action by the inspector general when he was notified of these allegations almost a year ago was a lack of urgency that the American taxpayers deserve.

In our evaluation we find no value added performed by Strong Castle. I repeat, no value added performed by Strong Castle, although profits flow to that company over and above the full payment to the companies who actually provide the IRS with those services.

No hearing related to the IRS would be complete without mentioning that under Obamacare, the task of the IRS to implement at least 47 new provisions, including 18 new taxes expected to raise \$1 trillion over the next decade, and the hiring of thousands of new employees, the need for computer systems to work and work accurately begs the question of can we afford to implement Obamacare if we cannot get the systems and controls in place for existing requirements.

Just this year the IRS has requested nearly \$500 million, the same amount of money the IRS plans to award to Strong Castle, to enforce Obamacare, including 2,000 new full-time employees.

We are not trying to say that one is interchangeable with the other, but it's very clear this is a lot of money, and it's a lot of money that could for a fraction, 2 or 3 or 4 percent savings, be passed on to the American people.

Often on this dais we applaud, appropriately, Federal workers. And I want to take a moment to make it clear the vast majority of people involved in contracting in the Federal workforce take contracting seriously. They scrutinize the contracts and most often try to get the best value for the taxpayer. Because the best value is not always the lowest price, this is a difficult job, and it requires absolute integrity. If we do not have full confidence in our procurement integrity, then we must choose the lowest price. The lowest price is not always the best value for the taxpayer, but the analytics of lowest price versus lowest value depends on an independent, non cozy relationship between the contracting officers and their superiors and the contractor. This committee has over the years applauded and will continue to applaud that most contracts have that characteristic. They are not always awarded the way contractors would like, but they are based on best value to the taxpayer.

In this case, at least for this chair and our draft report, we don't believe that occurred, and that is the reason that we are continuing our investigation.

Chairman ISSA. I would now like to recognize and thank the ranking member for being my full partner in this investigation.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And I want to, first of all, thank you for calling this hearing. It is indeed a very important hearing.

And it is interesting, this hearing is to examine allegations against a company named Strong Castle, Inc., that has been awarded \$51 million in obligations under information technology contracts with the Internal Revenue Service. The first allegation made against Strong Castle last December was that the company's owner, a local businessman from northern Virginia named Braulio Castillo, took improper advantage of the Historically Underutilized Business Zone program, the HUBZone, while setting up his companies here in Washington, D.C.

Let me say from the outset that I have a tremendous interest in HUBZones. I have lived in what would consider to be a HUBZone for 32 years in the same house, where I would imagine that black unemployment, male unemployment, is probably 35 percent unemployment; where businesses struggle trying to become a part of this economy and trying to do well. And I have lived long enough and seen enough to be able to tell you that I have worked with a lot of those small business people who have felt quite often that they weren't on the playing field. As a matter of fact, they felt that they weren't even in the stadium. And they have lived long enough and struggled long enough, and now I have seen many of them die chasing a dream, trying to get there, looking for a playing field that is simply level, but they can't even get on the field.

And so the purpose of the HUBZone program is to help small businesses increase employment, investment in economic development in historically underutilized business areas. As part of this program, which is overseen by the Small Business Administration, companies may receive preferred status when bidding on Federal contracts.

In order to qualify, Mr. Castillo opened one small office in a HUBZone near Chinatown, the Chinatown neighborhood of Washington, D.C. He then worked with the head football coach at Catholic University, his former college roommate, to hire college students living in a different HUBZone near that school.

Mr. Castillo's former employer and current competitor, Government Acquisitions, Inc., filed protests with SBA and the Government Accountability Office. The company accused Mr. Castillo of engaging in, "shell game," with multiple businesses and employees. It also accused him of, "manipulating the facts to gain the preferred status."

SBA investigated these allegations and decertified Mr. Castillo's company as a HUBZone contractor on May 23rd, 2013. I ask unanimous consent that the SBA's decertification letter be placed into the hearing record.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Thank you, Mr. Chairman.

SBA determined that Mr. Castillo's company submitted employee records that were, "false and inaccurate." It also concluded that the company, "does not have the adequate internal controls to independently verify employee records."

Despite these findings, I credit Mr. Castillo for appearing before the committee today. He participated in a 9-hour interview with committee staff, he provided documents to us and to SBA, and he is here to explain his actions. A committee staff also conducted extensive interviews with almost all of his employees.

Another major allegation involves Mr. Castillo's personal relationship with an IRS employee named Greg Roseman. Mr. Roseman did not disclose his relationship to the contracting officers who awarded contracts to Strong Castle, to his direct supervisor at the IRS, or to the IRS Office of General Legal Services. This certainly concerns everybody on this dais.

Mr. Roseman was not the contracting officer ultimately responsible for awarding the contracts to Mr. Castillo's company, but he

participated in the contracting process as a voting member of the Contracting Review Board for two of these contracts.

No IRS officials reported having any knowledge of Mr. Castillo's relationship with Mr. Roseman. In addition, no contracting officials or other IRS employee interviewed by the committee reported any inappropriate influence by Mr. Roseman on the contracting process; nevertheless, the evidence obtained by the committee indicates at least an appearance of impropriety because Mr. Roseman did not disclose this relationship or recuse himself from the contracting process.

Regarding their personal relationship, Mr. Castillo stated during his interview with the committee staff, "Greg Roseman and I are friends"

In addition, on May 15, 2013, the Treasury Inspector General for Tax Administration reported that Mr. Castillo and Mr. Roseman had exchanged text messages on their personal cellphones that, "contained inappropriate language and lacked professional decorum." Three hundred of these text messages included both work-related and personal communications. They also included obviously inappropriate communications with juvenile and offensive homosexual slurs and mocking references to another IRS employee.

Mr. Roseman has been reassigned pending the completion of the inspector general's review and is no longer overseeing procurement matters. Earlier this week his attorney wrote to the committee indicating that Mr. Roseman is invoking his Fifth Amendment right not to testify today. I am not here to defend his actions, but this is his right under the Constitution, and as Members of Congress we are bound to respect that right.

And just one other note. The chairman talked about the tremendous responsibility that the IRS will now—has been facing with regard to the Affordable Care Act. And I have said it from this dais before, but I will say it again: We, all of us, everybody up here has fired people, all of us. And bad actors does not stop the show. This is the United States of America. We have problems in an institution, and if people are not doing their jobs, they have to go, but that doesn't mean that the law, the law, the Affordable Care Act, should not and cannot be administered by that agency.

We are a can-do Nation. We are a can-do Nation, and it is part of our obligation, all of us, to make sure, as the chairman has said, that we put right this ship and make sure that it sails so that it can accomplish the things that the Congress had voted for, and that we have stood up for, and that is the law.

And with that, Mr. Chairman, I look forward to hearing from our witnesses, and I yield back.

Chairman ISSA. I thank the gentleman.

Chairman ISSA. All Members will have 7 days to submit opening statements for the record.

Chairman ISSA. And we now recognize our panel.

Mr. Brad Flohr is Senior Advisor for Compensation Service for the Veterans Benefits Administration at the U.S. Veterans Administration.

Mr. Michael Chodos—

Mr. CHODOS. Yes.

Chairman ISSA. —is the Associate Administrator of the Office of Entrepreneurial Development at the U.S. Small Business Administration.

Ms. Beth Tucker is the Deputy Commissioner for Operations Support at the Internal Revenue Service.

Mr. Gregory Roseman is the Deputy Director for Enterprise Networks and Tier Systems Support at the Internal Revenue Service. And I believe that is a previous title, but we will use it for now.

Mr. William A. Sisk is the Deputy Commissioner for Federal Acquisition Services at the General Services Administration, or GSA. Welcome.

And Mr. Braulio Castillo is the president and chief executive officer of Strong Castle.

Pursuant to the committee regulations, would you please all rise, raise your right hands to take the oath.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

Let the record reflect—please be seated. Let the record reflect that all witnesses answered in the affirmative.

Before I continue, and because this committee is acutely aware that one or more on the panel may choose to assert their Fifth Amendment rights, and because this chair does not want to have anyone waive that right accidentally, involuntarily or in any other way, does anyone here at this time intend to evoke their Fifth Amendment rights?

Mr. Roseman?

Mr. ROSEMAN. Yes, sir. I do intend to waive my Fifth—I intend to invoke my Fifth Amendment right to be silent.

Chairman ISSA. Mr. Roseman, you have not provided any written testimony today; is that correct?

Mr. ROSEMAN. Yes, sir.

Chairman ISSA. Okay. I understand from your counsel that you may want to assert your constitutional privileges, and you've already said that's correct.

Mr. Roseman, today's hearing will cover topics including waste, fraud and abuse of government contracting set-asides. As Deputy Director, Enterprise Networks and Tier Systems Support at the Internal Revenue Service, you are uniquely qualified to provide testimony that will help the committee better understand information technology acquisition practices at the IRS. To that end, I once again must ask you to consider answering questions that will bear on that subject with us.

Mr. Roseman, what is your title at the IRS?

Mr. ROSEMAN. Mr. Chairman, my title is what is—was Deputy Director of Enterprise Networks and Tier Systems Procurement.

Chairman ISSA. Mr. Roseman, to whom do you report at the IRS?

Mr. ROSEMAN. Mr. Chairman, on the advice of counsel, I respectfully decline to answer any questions, and invoke my Fifth Amendment privilege to remain silent.

Chairman ISSA. Would you do that once again? I apologize.

Mr. ROSEMAN. Mr. Chairman, on the advice of counsel, I respectfully decline to answer any questions, and invoke my Fifth Amendment privilege to remain silent.

Chairman ISSA. Mr. Roseman, when did you first become aware of a company known as Strong Castle, Inc.?

Mr. ROSEMAN. Mr. Chairman, on the advice of counsel, I respectfully decline to answer any questions, and invoke my Fifth Amendment privilege to remain silent.

Chairman ISSA. Mr. Roseman, are you currently employed by the IRS?

Mr. ROSEMAN. Mr. Chairman, on the advice of counsel, I respectfully decline to answer any questions, and invoke my Fifth Amendment privilege to remain silent.

Chairman ISSA. Lastly, Mr. Roseman, are you prepared to answer any questions here today about your role in the IRS acquisitions and information technology products and services from Strong Castle, Inc.?

Mr. ROSEMAN. Mr. Chairman, no.

Chairman ISSA. Mr. Cummings, do you have any—any questions before I dismiss the witness?

Mr. CUMMINGS. No, I have no questions. And I—as we respect the witness' right to remain silent, consistent with the Fifth Amendment, Mr. Chairman, so I have no objections with the chairman dismissing this witness.

Chairman ISSA. Given that the witness has indicated that he does not intend to answer any questions, and out of respect for his right under the Constitution, I will now ask the committee to excuse the witness, take away his name, and we'll take a short recess so that we can reset the table.

Mr. Roseman, you're excused.

[recess.]

Chairman ISSA. The committee will come to order.

I'd like to thank all the witnesses for their forbearance. The chair would like to make sure we allow sufficient time, and even though we're slightly smaller now, there's still a large panel, so I'd ask you to recognize that your entire opening statements will be placed in the record, and to stay within the 5 minutes or very close to it.

And with that, you're recognized, Mr. Flohr, for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF BRAD FLOHR

Mr. FLOHR. Thank you, Mr. Chairman, Ranking Member Cummings and members of this committee. I appreciate the opportunity to appear before you this morning to discuss the Department of Veterans Affairs' processes for granting service connection for disabled veterans and verifying Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses.

VA is committed to making accurate decisions in claims for disability compensation, as reflected in our goal of 98 percent accuracy by 2015 and monitoring the VOSB program. Oversight for these programs ensures that qualified veterans receive the benefits and business qualifications they have earned through their service to our Nation.

Disability compensation is a monthly benefit payable to veterans who have a disability or disabilities resulting from injury or disease incurred in or aggravated by Active military service. Such service

includes Active Duty, Active Duty for training during which the individual concerned was disabled or died from disease or injury incurred or aggravated in the line of duty, and in that Inactive Duty for training during which the individual concerned was disabled or died from injury incurred or aggravated in line of duty.

Service consisting solely of attendance at any one of the preparatory schools of the service academies may constitute Active Duty or Active Duty for training for VA purposes, depending on the circumstances of the individual service.

VA's Office of General Counsel held in a precedent opinion issued in 1994 and 1995 that characterization of an individual service at a United States academy preparatory school for purposes of entitlement to veteran's benefits depends upon the status in which the individual enters the school. Service by a person entering the school as a reservist called to duty for the sole purpose of attending the school or by one who is enlisted from civilian life or National Guard duty to attend the school constitutes Active Duty for training.

In contrast, persons who enroll directly from Active Duty under a prior enlistment remain on Active Duty within the meaning of Title 38 during their attendance. Those individuals selected for enrollment in these preparatory schools are in the military. They wear the uniform, are paid based on their military rank, are subject to the Uniform Code of Military Justice, and upon release from that period of training, they are issued a DD-214 with either honorable service or other than honorable, or whatever the characterization may be. In November of 1995, the VA amended its regulations to reflect our general counsel's statutory interpretation concerning this type of service.

VA's statutory authority to compensate veterans for disability resulting from service, stated in 38 United States Code section 1110 is not limited to providing compensation for disabilities caused by military service. VA's statutory authority is to compensate veterans for disability incurred in or aggravated by service.

Once an individual takes the oath to serve and protect the United States, they are on duty 24 hours a day 7 days a week. If he or she is injured or develops a chronic disease, whether in combat or during routine activities, VA claims processors prepare a disability rating decision that determines entitlement to service connection and the amount of any disability benefits that may be payable.

In determining whether a disability is related to military service, there must be evidence of an injury or disease or an exposure in service; medical or, in certain circumstances, lay evidence of a current disability; and evidence of a medical or scientific nexus or link between the current condition and the in-service event.

VA has a statutory duty to assist claimants in gathering the required evidence. This includes obtaining certain supporting evidence and ordering a VA examination or requesting a medical opinion as necessary. VA reviews documents pertaining to military service and service treatment records obtained from the particular military service. VA also requests evidence identified by the claimant that may be pertinent to the claim and medical records from any private providers that we are made aware of.

VA carefully evaluates all available evidence to determine if entitlement to service connection is established and, if so, the level of severity of the disability. VA's standard of proof in making these determinations is reasonable doubt.

In addition to requesting and revealing records from military service departments, newly hired claims processors are provided training on military records, which includes identifying any noted alterations or suspected fraudulent records. Each regional office also has a military records specialist with expertise in military records who serves as a liaison with other government agencies. VA employees are aware of their responsibility to ensure that benefits are awarded to those who are entitled to them.

Upon a determination that fraud has occurred, a preliminary decision is made with respect to adjusting or terminating an award. The beneficiary is provided due process rights, including notice of the action to be taken, the reason for the adjustment, the right to representation, and the right to present evidence to rebut the evidence serving as the basis for the proposed adjustment.

If no evidence is presented, the award is adjusted, and the case is referred to the Office of the Inspector General for review and any further action that office may deem necessary.

The Office of the Inspector General coordinates investigation with the United States Attorney's Office, State and local prosecutors—

Chairman ISSA. Mr. Flohr, could you summarize, please?

Mr. FLOHR. Yes, sir. That actually summarizes my statement on service connection.

Chairman ISSA. Thank you very much.

Mr. FLOHR. You're welcome.

[Prepared statement of Mr. Flohr follows:]

**STATEMENT OF
BRAD FLOHR
SENIOR ADVISOR FOR COMPENSATION SERVICE
VETERANS BENEFITS ADMINISTRATION (VBA)
U.S. DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JUNE 26, 2013**

Chairman Issa, Ranking Member Cummings, and Committee Members, thank you for providing me the opportunity to discuss the Department of Veterans Affairs' (VA) processes for granting service connection for disabled Veterans and verifying Service Disabled Veteran-Owned Small Businesses (SDVOSB) and Veteran-Owned Small Businesses (VOSB). VA is committed to making accurate decisions for the disability compensation program and monitoring the VOSB Program. Oversight for these programs ensures that qualified Veterans receive the benefits and business qualifications they have earned.

Disability Compensation Process

Overview

Disability compensation is a monthly tax free monetary benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military, naval, or air service. Such service includes active duty, active duty for training during which the individual concerned was disabled or died from disease or injury incurred or aggravated in line of duty, and inactive duty training during which the individual concerned was disabled or died from injury incurred or aggravated in line of duty or from heart attack or stroke. Service

consisting solely of attendance at any one of the preparatory schools of the service academies may constitute active duty or active duty for training for VA purposes, depending on the circumstances.

VA's Office of General Counsel held in a precedent opinion issued in 1994 that characterization of an individual's service at a U.S. academy preparatory school for purposes of entitlement to Veterans benefits depends upon the status in which the individual enters the school. Service by a person entering the school as a reservist called to duty for the sole purpose of attending the school or by one who is enlisted from civilian life or National Guard duty to attend the school constitutes "active duty for training." In contrast, persons who enroll directly from active duty under a prior enlistment continue to serve on "active duty" within the meaning of Title 38, section 101(21), during their attendance. The Office of General Counsel found it significant that an enlisted Servicemember who is disenrolled from a preparatory school prior to completion of the school program still has a military obligation to complete, while an individual attending a preparatory school from the Reserves, National Guard, or civilian life is generally discharged from the service in the event of premature disenrollment. In November 1995, VA amended its regulations to reflect this interpretation.

Compensation may also be paid for post-service disabilities that are considered related or secondary to disabilities occurring in service and for disabilities presumed to be related to circumstances of military service, even though they may arise after service. There is no time limit for filing claims after discharge from military service.

VA's disability rating schedule is authorized by 38 U.S.C. § 1155, which requires VA to adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries "based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations." The VA rating schedule provides, for each listed medical or psychological disability, the symptoms or specific findings that warrant a particular disability level, and Congress sets the amounts of compensation for each percentage of disability. The determination by VA of the range of disability percentages available for each condition is, in essence, a determination of how disabling the condition is deemed to be, on average, to a person working in a civil occupation.

The benefit amount is graduated according to the degree of the Veteran's disability on a scale from 10 percent to 100 percent (in increments of 10 percent). If a Veteran has dependents, an additional allowance may be added if the combined disability is rated 30 percent or greater. Compensation may be offset if the Veteran receives military retirement pay, disability severance pay, or separation incentive payments.

In determining whether a disability is related to military service, there must be evidence of an in-service event, a current condition, and a medical nexus establishing a link between the current condition and the in-service event. VA has a statutory duty to notify a claimant of the evidence needed to substantiate his or her claim and a duty to assist claimants in gathering the required evidence. This includes obtaining certain supporting evidence and ordering a VA examination, if necessary. After all of the supporting evidence has been received, VA carefully evaluates it to

determine if entitlement to service connection is established and, if so, the level of severity of disability.

Oversight

VA performs several oversight functions during the claims process. First, VA requests Department of Defense (DoD) documents confirming military service. VA also requests documents pertaining to medical treatment in service and personnel records from DoD. These records, which are generally the original records, are forwarded to VA from DoD and are maintained by VA as part of the Veteran's claims file record. In addition, VA will accept photocopies of these records if they were issued by the service department and have been certified as true copies of the originals. Records can be certified by a public custodian, such as the Records Management Center, or by an accredited agent, attorney, or service organization representative who has successfully completed VA-prescribed training on military records. VA also confirms military service electronically with DoD in many cases.

In addition, newly hired VA claims processors are provided training on military records, which includes identifying alterations and fraudulent records. Each regional office also has a Military Records Specialist with expertise in military records who serves as a liaison with other governmental agencies.

If any potentially fraudulent activity is suspected, the case is referred to the VA Office of the Inspector General (OIG). The OIG coordinates investigation with the U.S. Attorney's Office, state and local prosecutors, other agencies, and the regional office as necessary. OIG pursues criminal and civil actions if warranted, but

fraudulent documentation can result in the severance of benefits as well. VA will act to sever benefits if it is determined that fraudulent documentation was the basis for granting benefits.

If at any time, fraud is suspected in a determination made in a claim for benefits, VA will make a determination and notify the beneficiary of action to be taken, including a new rate of benefits, if any, the right to submit evidence showing the action should not be taken, and the right to representation and a hearing. If after 35 days, no new evidence is received or requested for a hearing or representation, award action will be taken, and the claim will be referred to the OIG.

SDVOSB Program

VA's Office of Small and Disadvantaged Business Utilization's (OSDBU) mission is to help small and VOSBs contribute most effectively to the important mission of VA by receiving the maximum practicable percentage of VA contract dollars. The Center for Veterans Enterprise (CVE), which is part of OSDBU, is responsible for verifying the eligibility of VOSBs and SDVOSBs to participate in VA's Veterans First set-aside program that provides procurement preference to VOSBs and SDVOSBs, solely for VA acquisitions, in accordance with the requirements of Public Law (P.L.) 109-461, as amended by P.L. 111-275. VA's implementing regulations are promulgated at 38 Code of Federal Regulations (CFR) Part 74. VA's program has been a great success in that VA has achieved over 20 percent of procurement dollars being awarded to SDVOSB/VOSBs each of the last several fiscal years. The Governmentwide SDVOSB goal is only 3 percent.

A firm applying for verification must gather together all of the relevant business documents for its business type in order to submit its application. The Veteran first creates a profile in the Vendor Information Pages (VIP) database, at www.vebiz.gov, that lists a company's business contact information, and includes a completed VA Form 0877 (Attachment A) that requires the Veteran to list the name of the company, its DUNS number¹, and a listing of all company owners to include the percentage ownership of Veteran, service-disabled Veteran, surviving spouse, or non-Veteran owners. All owners must electronically sign the Form 0877. All Veteran owners must also supply their social security number, VA file number, or claim number and their date of birth.

Once the application is submitted, CVE then checks the VA's Beneficiary Identification Records Locator Subsystem (BIRLS) to check the Veteran or related status of the Veteran, service-disabled Veteran or surviving spouse owners. The record must show an other than dishonorable discharge, and if the Veteran is claiming service-disabled status on the application, the service-disabled status is also checked. Once this criterion of eligibility is confirmed, CVE checks to ensure that the business and all of its owners are not parties currently excluded from Federal contracting in the Federal System of Award Management database, that all required business documents (see Attachment B) were uploaded, and that they are sufficient to proceed with the examination. During the examination stage of the process, the examiner reviews publicly available information in an internet search, examines each of the submitted documents for compliance with the ownership and control criteria

¹ The Data Universal Numbering System, abbreviated as DUNS, is a system developed and regulated by Dun & Bradstreet that assigns a unique numeric identifier to a single business entity.

laid out in 38 CFR Part 74. The internet search includes verifying that the business is registered and in good standing on the applicable Secretary of State site, and any other information contained in sites such as Dun and Bradstreet or other business intelligence sites. The examiner then creates a report noting all relevant information for the determination and makes a recommendation to approve, deny or to undergo further review.

The application then passes to the evaluation stage where it receives a quality review to ensure that the examiner correctly noted all issues. If the firm is found in compliance with the regulations, an approval determination is recommended, and an approval letter is prepared for the Director's review and signature. If the firm is found to not be in compliance with the regulations, a findings letter is developed to identify the issues that would cause the firm to be denied. If the issues are eligible for the Pre-Determination Findings process, that was implemented on May 1, 2013, the firm is then allowed to correct the issues or withdraw its application prior to a determination on the company's eligibility. Once approved, the company then appears in the public view on the VetBiz VIP database showing firms that have been verified.

Conclusion

VA has thorough processes for determining and granting service connection for disabled Veterans and verifying SDVOSB and VOSB. These processes include appropriate oversight functions that ensure qualified Veterans receive the benefits and business qualifications they have earned. This concludes my testimony. I would

be happy to address any questions or comments from Chairman Issa, Ranking Member Cummings, or the Committee Members.

Attachment A

Form Approved, OMB No. _____
Respondent Burden: 5 Minutes

Department of Veterans Affairs									
VETBIZ VENDOR INFORMATION PAGES VERIFICATION PROGRAM									
<p>INSTRUCTIONS: Please provide the name of the company and DUNS number. All stockholders must provide First, Last, Middle Name, Percentage of Business Ownership, Veteran Status, Social Security Number or File Number, Date of Birth (SSN/File Number and DOB only applies to Veterans or eligible Surviving Spouse) and sign the form. Ownership must equal 99-100%. VA will not accept applications from owners/stockholders who are not Veterans. DO NOT MAIL OR EMAIL the form.</p>									
PART I - CONSENT TO ACCESS AND VERIFY VETERAN(S) OWNER(S)/VETERAN(S) STOCKHOLDER(S) RECORD(S)									
Each Veteran owner/Veteran stockholder named herein authorizes consent for the Center for Veterans Enterprise (CVE) personnel to access and verify their records. CVE will match your information with records maintained by the Veterans Benefits Administration (VBA) database.									
NAME OF COMPANY		DBA		DUNS					
NAME(S) OF EACH BUSINESS OWNER/STOCKHOLDER/SURVIVING SPOUSE <i>(Mr./Ms., First Name, Middle, Last, Jr./Sr./III)</i>	% OF OWNERSHIP	VETERAN STATUS				ARMVA FILE NO./ CLAIM NO. FOR VETERAN(S) & SURVIVING SPOUSE ONLY <i>(Dep. of Non-Veteran)</i>	DATE OF BIRTH	SIGNATURE OF EACH BUSINESS OWNER(S)	DATE SIGNED
		VETERAN	SVC. DIS. VETERAN	SURVIVING SPOUSE	NON-VET				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

PART II - AFFIRMATION

By signing this form, I affirm that the legal documents establishing the business are filed with my state and such articles established that at least 51% of the business is owned and controlled (or in the case of stock, at least 51% of the stock is owned) by Veterans or service-disabled Veterans, or eligible surviving spouses, as stated in Public Law 109-461 Section 8127 (k) (2). I affirm that each of the owners of the business (or in the case of a business with stock, each of the stockholders) is eligible to participate in Federal contracting and that neither the business nor any of the individual owners appears on the Excluded Parties List as identified in Federal Acquisition Regulation 9.404-3. I further affirm that I have read and understand the language in 13 CFR 125.10 and that the business is controlled by individuals eligible to participate in the SDVOSB program if I am claiming SDVOSB status. A false statement on any part of your application may be punished by fine or imprisonment (U.S. Code title 18, section 1001). I understand that any information I give may be investigated as allowed by law or Presidential order. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. Misrepresentations of VOSB or SDVOSB eligibility may result in action taken by VA officials to debar the business concern for a period not to exceed 5 years from contracting with VA as a prime contractor or a subcontractor.

PRIVACY ACT STATEMENT: The information collected on this form is necessary to meet the eligibility of veteran-owned small business concerns under Public Law 109-461, Section 8127 requirements. We will use the information to identify any VA records. Furnishing the information on this form, including your Social Security Number (No.) and VA File/Claim No. is voluntary; however, if the information is not furnished, VA will not recognize your small business as veteran-owned or service-disabled veteran-owned. Your obligation to respond is voluntary.

PAPERWORK REDUCTION ACT NOTICE: The collection of information meets the requirement of Public Law 109-461, Section 8127 (f) 4, as amended by Section 2 of the Paperwork Reduction Act of 1995. This form has been created to provide an efficient way for the Department of Veterans Affairs to collect and verify Veterans and service-disabled Veterans in the Vendor Information Pages (VIP). We estimate the time to fill out the form to be about 10 minutes to read the instructions, gather the facts, and answer the questions. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed.

Attachment B

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JV
General Information:							
Business and/or personal professional, industry, and/or other licenses, permits or accreditations	Description - Licenses are issued after determining applicant is in compliance with all City, County and State Statutes and Ordinances. They are then authorized to operate the specific type of business identified on the license.	Rationale -- Helps CVE to determine if the company is operating the "type" of business legally in the state where it is chartered to perform services. Also, the legality of the tenant space can be verified against the address listed on the license. If not the same, it is important to investigate whether the company has moved its location.	X	X	X	X	X
Resumes of all owners, directors, partners, officers and other key personnel	Description - Typically a one-to-two page document listing the highlights of an individual's career, education, personal information, etc. Can be cross checked and verified.	Rationale -- Helps CVE determine the capability to control the company. The Veteran's applicant's resume is reviewed to determine if he has the prerequisites, qualifications, and knowledge to operate and manage the type of company as identified in the business license.	X	X	X	X	X
Approval letters for businesses with Sensitive Compartmented Information Facility (SCIF) or "Vault"	Description - A SCIF or Top Secret facility is a container, room or building where classified material is stored or handled. The Security Officer's oversee access to this facility.	Rationale -- Helps CVE determine control. This document is reviewed because the Veteran or person who has majority control of the company will usually be listed as the Primary Security Officer or as the alternate for access to these facilities. This is more prevalent in small to mid-size (up to 100 employees) companies.	X	X	X	X	X
Financial Information:							
IRS Federal tax form 1040 and the attached Schedule C for the past three years	Description - IRS form to identify Profit or Loss for Sole Proprietorship. Identifies the proprietor, principal business and the name of the business. An individual in business for themselves, or who carry on a trade or business as a sole proprietor or an independent contractor generally file a Schedule C with IRS Form 1040. Partnerships, joint venture s, etc., generally must file Form 1065.	Rationale -- This document enables CVE to determine where profits of company are going. It also is relevant because proprietor reports to IRS that he wholly owns company.	X				

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JV
IRS Federal Tax Form 1065 and corresponding K-1 for past three years.	Description - The 1065 (Partnership tax return) identifies the partners' share of income or loss from a partnership. The Schedule K-1 requires the partnership name, address, partnership EIN, partners identification number, partner's name and address, partner's share of liabilities, taxable income from passive activities, qualified dividends, net capital gain (loss) from passive activities, net capital gain (loss) from other activities, net passive AMT adjustment, net other AMT adjustment, general credits, low income housing credits and any other information the partnership needs to include. Of importance, Box G identifies the type of partner.	Rationale - Helps CVE determine control. Box G provides the partner with two choices to check; (1) General partner or LLC member-manager or (2) Limited partner or other LLC member. To identify that they are the controlling manager, they must check the first box indicating that they are "General partner or LLC member-manager." Box J will also identify his profit, loss, and Capital percentages both at the beginning and year end statement. These percentages are generally based on the Partnership agreement.		X			
Appropriate IRS tax form filed; if filed as Sole Proprietorship (Schedule C), partnership (Federal tax form 1065 and K-1); or S Corporation (1120S and K-1) for the past three years.	Description - For tax purposes, LLCs can elect to be treated as either a corporation, a sole proprietorship or as a partnership. The IRS treats most LLCs as a partnership or sole proprietorship by default, though the members of an LLC can elect to be taxed as a C corporation. As a partnership or sole proprietorship, the LLC's net income or loss flows through to the individual members of the company. The company itself must file a form showing how these proceeds are distributed among its members. An LLC must file Form 1065 with the IRS even if it has no income.	Rationale - Helps CVE determine who benefits from the firm. The appropriate IRS tax form will show the distribution of the income or loss to the individual members of the LLC.			X		
Federal tax form 1120S and corresponding K-1 for the past three years	Description - Schedule K-1 of Form 1120S is used to report each shareholder's pro-rated share of net income or loss from an S-Corporation, along with various separately stated income and deduction items. The S-Corporation nets non-separately stated income and expenses, and reports the net income or loss to shareholders. The profit or loss is allocated in strict proportion to the shareholder's percentage of ownership in the S-Corporation. Box F identifies the Shareholder's percentage of stock ownership for tax year.	Rationale - Helps CVE determine ownership. Part II, Box F identifies the shareholder's percentage of stock ownership for the corresponding tax year. This form helps prove percentage of ownership.				X	
For Joint Ventures, applicable Federal tax returns based on business type (see above) for the last three years for each participant	Description - Use the descriptions above for the applicable business types.	Rationale - Use the review guidance above for the applicable business types.					X

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JV
Signature cards authenticated by financial institutions (Banks/Credit Unions/etc.)	Description - Card that a customer signs when opening an account at a financial institution. It identifies the depositor. A corporate signature card bears the names of the firm's officers authorized to sign checks or transfer funds.	Rationale - Helps CVE determine control. The bank signature card identifies who within the company has the authority to authorize and sign checks on behalf of the company. The Veteran applicant who owns the company should have authority on this. There may be two people with authority but the Veteran owner should be the one with the "unlimited" expressed authority.	X	X	X	X	X
Copies of approximately 20 negotiated company checks.	Description - Cancelled checks with all Personally Identifiable Information (PII) redacted are a written order by the business directing a bank to pay money. Normally signed by owner or CFO depending on authorization limits.	Rationale - CVE requests these as a means to determine if the SDV is authorizing financial obligations on behalf of the company and if not, who within the company does so. In addition, CVE is attempting to identify if the checks are from the Applicant Company or are being authored from another business.	X	X	X	X	X
Management Information:							
Lease, Management and Services agreements, to include supporting payments	Description - The lease agreement is an agreement between a landlord and tenant that sets out the terms under which a tenant may occupy and use a commercial property. It also creates a legal right for the tenant to occupy the property. Other types of agreements are similar. The supporting payments (checks, etc.) are documentation the agreements are in effect.	Rationale - Enables CVE to determine who has the authority to legally bind the applicant company. Includes lease, management, or service agreements. CVE may review 2-3 random months of checks to validate that the Veteran applicant company is actually making payment for the binding services, demonstrating that applicant is not dependent on another firm.	X	X	X	X	X
Operating Agreement including all amendments	Description - An agreement among Limited Liability Company (LLC) members governing the LLC's business and their financial and managerial rights and duties. Many states require a LLC to have an Operating Agreement. Operating Agreements generally address the members percentage interests in the LLC, rights and responsibilities, voting powers, how profits and losses will be allocated, how the LLC will be managed, rules for holding meetings and taking votes, and buy-out and sell provisions, which determines what happens when a member wants to sell his interest, dies, or becomes disabled.	Rationale - Enables CVE to determine that the Veteran owner has requisite control of the firm, in that the applicant has full expressed written authority to make all final decisions regarding the operations of the company and authority to bind the company on all contracts. The Veteran applicant should have sole expressed authority per the Operating Agreement without consent of the limited partners or shareholders.	X	X	X	X	X
Legal Structure:							
Ownership Agreements or Partnership Agreements (i.e. proxies and voting trust agreements)	Description - May be part of the partnership agreement or a separate agreement which identifies the percentage of voting rights for decision within a company's operations.	Rationale - Enable CVE to confirm that Veteran controls at least 51% of the total votes. This can be validated in the minutes of Stockholders' or Board of Directors' meetings.		X	X	X	X

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JY
Partnership Agreement, including all amendments	Description - A written agreement which identifies the nature of the business, capital contributed by each partner, and their rights and responsibilities. Partners are jointly and severally liable for the debts of the firm. Even on withdrawing from the partnership they remain liable for already incurred debts. The Partnership Agreement is also referred to as an agreement of partnership or articles of partnership.	Rationale - Enables CVE to determine if Veteran Owner has control over capital assets of Company. Verifies debt instrument (check, etc.) used to make purchase or investment into company. Can also be validated on the 1065 K-1 Box J for partnerships which will show percentage of capital for corresponding tax year. The two percentages for capital should correlate and be the same.		X			
Shareholders Agreement, including all amendments	Description - An employment agreement among the shareholders of a small corporation permitting a shareholder to take a management position with the corporation without any claim of conflict of interest or self-dealing against the shareholder/manager. Such agreements are common when there are only three or four shareholders.	Rationale - Enables CVE to determine that Veteran has authority to make management decisions, and has control over decisions. The Shareholder agreement will unequivocally identify the managing partner of the corporation, their responsibilities, and their rights as the managing partner. Their rights should authorize them to make prevailing managerial decisions without authorization from other shareholders.		X	X	X	X
Equity participation or equity plans, restricted stock or ownership interests or options for stock or ownership interest or plans	Description - An employer must prepare an equity plan which complies with the requirements set forth in the Employment Equity Act. The plan must set out the positive policies and practices that the employer intends to institute in the following one to three years to correct the under-representation of designated group members which has been identified in the workforce analysis.	Rationale - Enables CVE to determine if Veteran has control of Company, by identifying equity ownership and who has can authorize the granting of equity.			X	X	X
Official Certificate of Formation and Operating Agreement with any amendments	Description - Identifies the general purposes for which the Corporation is formed are to exercise the rights and powers and to perform the duties and obligations of the Corporation, in accordance with the Declaration, the Bylaws of the Association.	Rationale - Identifies the rights and powers of the corporation and who is authorized to make and carry out such powers. The Veteran applicant must have expressed authority of at least 51%, if identified.	X	X	X	X	

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JV
<u>Minutes of first and most recent stockholder and Board of Directors meetings</u> (Evaluator may request additional minutes, and applicant may supply additional minutes to explain any changes since the establishment of the Operating Agreement)	Description - Minutes are considered legal documents by auditors, IRS and courts, and they represent the actions of the board. Many assert that if it's not in the minutes, it didn't happen. They should include the name of the organization, date and time of meeting, who called it to order, who attended and if there a quorum, all motions made, any conflicts of interest or abstentions from voting, when the meeting ended and who developed the minutes	Rationale - The minutes are used to determine whether or not the Veteran applicant has allowed other to substantially operate and control the company. His voting rights and statements per the Operating agreement should give him control of managerial decisions. As such, this should be reflected in the minutes of the Stockholders' and Board of Directors' meetings. Also, should review minutes to verify that none of the Veteran applicant's powers were taken away from him.		X	X	X	
All corporate bylaws and all amendments	Description - Bylaws governing the organization and company	Rationale - Enables CVE determine whether Veteran has control, as these documents outline who controls and operates the company and how it is operated.		X	X	X	
Articles of Organization for LLC's, including all amendments	Description - A document required to be filed with an appropriate state or local government agency, in order to establish legal recognition of a Limited Liability Company (LLC). Articles of organization closely parallel articles of incorporation needed for legal creation and recognition of corporations.	Rationale - Enables CVE to identify the Board of Directors, and the responsibilities of the Board. Usually the Veteran, as operating manager or President, is on the Board of Directors.			X		
Articles/certificate of incorporation filed with the Secretary of State including all amendments	Description - Also referred to as the Certificate of Incorporation (or the Corporate Charter) they are the primary rules governing the management of a corporation. They include the name, names of persons organizing the corporation, stock shares authorized for issuance, Board of Directors, and location.	Rationale -Helps CVE determine or validate ownership. May or may not identify the Veteran applicant. May only identify the Registering Agent which may not be the Veteran applicant. Usually will identify the Board of Directors, usually the operating manager or President is on the Board of Directors which should be the Veteran applicant.				X	
Joint Venture Agreement and current opportunity on which joint venture is bidding	Description - A written agreement which identifies the nature of the joint venture (JV), capital and resources contributed by each JV, and their rights and responsibilities. The current opportunity is what the JV is bidding on and is one of the underlying reasons for formation	Rationale - Helps CVE determine control of the JV. May or may not identify the Veteran applicant. Veteran applicant must exert majority control of the JV over management decisions and day-to-day operations. Veteran applicant must own a majority of the JV in terms of revenue received from the JV.					X

Document Rationale			Sole Prop	Part	LLC/LLP	Corp	JV
<p><u>Stock registers for Applicant or stock ledgers showing listing all shares of issuance.</u></p>	<p>Description - A stock ledger is used to record the owners of a corporation or LLC. Stock certificates are issued to shareholders in a corporation and certificates of ownership are issued to members/managers in an LLC. All certificates must be tracked regardless of how old they are. It will include the name of the shareholders, number of the certificates, number of shares issued to a particular shareholder, who sold the shares to the shareholder, and the type of stock issued to the shareholder.</p>	<p>Rationale – Helps CVE determine major ownership. Identify the total number of stocks "issued" within the company; to include the total number issued to the Veteran applicant. His total number of shares issued divided by the overall number will provide the percentage of the company issued to him for ownership. This percentage should be at least 51% or greater unless surviving spouse involved.</p>		X	X	X	

Chairman ISSA. Mr. Chodos.

STATEMENT OF MICHAEL A. CHODOS

Mr. CHODOS. Chairman Issa, Ranking Member Cummings and distinguished members of the committee, thank you for inviting me to testify about the Small Business Administration's, or SBA's, role in the awarding of certain contracts to Signet Computers, Inc., and its successor, Strong Castle, Inc., a firm recently decertified by SBA as a Historically Underutilized Business Zone, or HUBZone entity.

Before discussing the specifics of the SCI case, I would like to briefly describe the HUBZone program and some of its recent successes. Its aim is to help small firms in underserved communities gain access to Federal contract opportunities. Generally HUBZones are urban or rural areas with very low median household incomes and/or very high unemployment. The program requires certified companies to have their principal office in a HUBZone and to employ individuals who reside in HUBZones, with the intention of spurring economic growth within the community.

As of May 31, 2013, there were 5,029 certified HUBZone small businesses. In fiscal year 2012, over 8 billion—over \$8 billion were awarded to certified firms for work performed in all 50 States, including D.C., Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

In the case of the SCI, the firm applied for HUBZone certification on March 11, 2012, and was certified on June 22, 2012. SCI was awarded a blanket purchase agreement by the IRS on or about December 7th, 2012. A HUBZone status protest was filed with SBA by a competing firm on December 19, 2012.

SBA could not process the protest, based on applicable jurisdictional rules; however, SBA believed the information contained in the protest called into question SCI's HUBZone eligibility. As a result SBA promptly began its investigation into the eligibility of SCI for the HUBZone program in late December of 2012. Based on the facts and evidence found during this investigation, SBA proposed SCI for decertification on January 31, 2013.

It is important to note that this investigation and the resulting proposed decertification took place before and independent of the committee investigation of SCI.

After a thorough review of the information provided to SBA in response to the proposed decertification, SBA decertified SCI on May 23, 2013.

SBA takes very seriously its duty to root out fraud, waste and abuse in all of the Federal small business contracting programs, including HUBZone. Our top priority at SBA is to ensure that the benefits of our programs flow to the intended recipients. Our government contracting programs are a critical and effective toolkit for small businesses; however, we have no tolerance for fraud, waste and abuse in those programs.

For this reason we have implemented a comprehensive three-pronged strategy to identify, prevent and pursue noncompliance or fraud across all our government contracting programs. First is effective certification processes. Clear and comprehensive eligibility screening on the front end ensures that only qualified, eligible firms participate in our programs.

Second, continued surveillance and monitoring. Targeted and thorough examinations, reviews and on-site visits identify potentially fraudulent firms or those that no longer qualify.

And three, robust and timely enforcement. Prompt, proactive enforcement removes bad actors, deters wrongdoing, and provides integrity to our contracting programs.

We are especially proud of our core partnership with the SBA's Office of Inspector General, whose assistance is critical to the success—to the success of our improvement efforts.

Through ongoing and proactive collaboration with the Government Accountability Office and our stakeholders, SBA intends to protect the Federal Government commitment to aid and assist small business.

The strategy and efforts described in my testimony reflect an integrated approach that utilizes resources across our Office of Government Contracting and Business Development, our General Counsel's Office and our 68 district offices and others.

As demonstrated by the initiatives and efforts described in this testimony, SBA has taken great strides to strengthen the small business contracting programs and implement a robust strategy to combat fraud, waste and abuse. Work remains to be done to completely eliminate fraud, waste and abuse in our programs, as bad actors, regrettably, still attempt to take wrongful advantage of government benefits.

While we have made significant progress, we continue to look for ways to identify further opportunities for improvement and to maximize small businesses' access to this important source of revenue so they can do what they do best: start, grow and create jobs.

Thank you for the opportunity to testify before you today, and I am happy to answer any questions you may have.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Chodos follows:]



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

**TESTIMONY OF MICHAEL A. CHODOS
U.S. SMALL BUSINESS ADMINISTRATION**

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

JUNE 26, 2013

Chairman Issa, Ranking Member Cummings, and distinguished members of the Committee. Thank you for inviting me to testify about the Small Business Administration's (SBA) role in the awarding of certain contracts to Signet Computers, Inc., and its successor Strong Castle Inc. (SCI), a firm recently decertified by SBA as a Historically Underutilized Business Zone (HUBZone) entity.

Before discussing the specifics of the SCI case, I would like to briefly describe the HUBZone program and some of its recent successes. The program was enacted into law as part of the Small Business Reauthorization Act of 1997. Its aim is to help small firms in underserved communities gain access to Federal contract opportunities. Generally, HUBZones are urban or rural areas with very low median household incomes and/or very high unemployment. The program requires certified companies to have their principal office in a HUBZone and to employ individuals who reside in HUBZones, with the intention of spurring economic growth within the community.

In Fiscal Year (FY) 2012, the HUBZone Program assisted 7,872 small businesses to better understand program requirements and benefits. As of May 31, 2013, there were 5,029 certified HUBZone small businesses. In FY 2012, over \$8 billion dollars were awarded to certified firms for work performed in all 50 states, including DC, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

In the case of SCI, the firm applied for HUBZone certification on March 11, 2012, and was certified on June 22, 2012. The Internal Revenue Service (IRS) issued RFQ No. T1RNO-12-Q-00083 as a request for quotes to establish a Blanket Purchase Agreement under the General Services Administration's (GSA) Federal Supply Schedule 70 contract. SCI was awarded the

BPA on or about December 7, 2012. A HUBZone status protest was filed with SBA by a competing firm on December 19, 2012.

SBA could not process the protest based on applicable jurisdictional rules; however, SBA believed the information contained in the protest called into question SCI's HUBZone eligibility. As a result, SBA began its investigation into the eligibility of SCI for the HUBZone Program in late December of 2012.

Based on the facts and evidence found during this investigation, SBA proposed SCI for decertification on January 31, 2013. It is important to note that this investigation—and the resulting proposed decertification—took place before, and independent of, the Committee investigation of SCI.

After a thorough review of the information provided to SBA in response to the proposed decertification, SBA decertified SCI on May 23, 2013. A more detailed explanation of the decertification can be found in SBA's Notice of Decertification, which has previously been provided to the Committee.

SBA takes very seriously its duty to root out fraud, waste, and abuse in all of the Federal small business contracting programs, including HUBZone. Our top priority at SBA is to ensure that the benefits of our programs flow to the intended recipients. Our government contracting programs are a critical and effective toolkit for small businesses; however, we have no tolerance for fraud, waste and abuse in those programs. For this reason, we have implemented a comprehensive, three-pronged strategy to identify, prevent and pursue non-compliance or fraud across all our government contracting programs:

1. Effective certification processes: Clear and comprehensive eligibility screening on the front-end to ensure that only qualified, eligible firms participate in our programs;
2. Continued surveillance and monitoring: Targeted and thorough examinations, reviews and site visits to identify potentially fraudulent firms or those that no longer qualify; and
3. Robust and timely enforcement: Prompt, proactive enforcement to remove bad actors, deter wrongdoing, and provide integrity to our contracting programs.

We are especially proud of our core partnership with the SBA's Office of Inspector General (OIG), whose assistance is critical to the success of our improvement efforts. Through ongoing and proactive collaboration with the Government Accountability Office (GAO) and our stakeholders, SBA intends to keep the Federal government's commitment to aid and assist small business. Below are the details of the specific ways, we implement our three-pronged strategy in SBA's Government Contracting and Business Development (GCBD) programs, with specific examples from the HUBZone Program.

Effective Certification Processes

SBA certifies eligible firms to participate in the HUBZone program. In FY 2009, SBA began a two-year re-engineering effort of the HUBZone program that included enhanced reviews to minimize the opportunity for ineligible firms to gain entry into the program. The process now requires applicants to submit relevant documentation (i.e., lease/rental agreements, three years of tax returns, citizenship documentation, payroll records) to prove they meet the program requirements.

Additionally, we reduced the HUBZone application processing time and eliminated the application backlog issues that hindered the program in the past. In late 2009, the application processing time was about 300 days. Now, about 61% of the applications are processed within 90 days, and the HUBZone office continues to further reduce application processing times.

Continued Surveillance and Monitoring

Only those firms entitled to benefit from SBA's programs should remain in them. SBA has used three tools to monitor firms in the HUBZone program: (i) site visits, (ii) re-certifications and (iii) legacy portfolio reviews. These efforts, coupled with the changes to the HUBZone maps following the 2010 Census as required under the Small Business Act, have significantly reduced the number of eligible HUBZone firms.

Robust and Timely Enforcement

SBA's programs must be reserved for those who are—and who remain—eligible. SBA has a range of enforcement tools at its disposal when identifying a firm that is ineligible to participate in our programs. Some are not aware that they are out of compliance, and simply withdraw when made aware of their ineligibility. Others are bad actors, and are taking intentional and often fraudulent advantage of our programs. SBA has no tolerance for a firm found to be acting fraudulently, and where appropriate we will act decisively to oust them from our programs and from doing business with the government generally.

In addition to our own compliance, monitoring and enforcement efforts, we also conduct a thorough investigation and review of every firm cited in IG audits and GAO reports. We have—and will continue to take—all appropriate actions, including suspension and debarment and referral to the Department of Justice, against any firms attempting to "game the system" with SBA's programs.

We recently assembled an SBA Suspension and Debarment Task Force (Task Force), which has developed a number of tools to encourage fraud detection and streamline fraud referrals. For instance, it has implemented a system for the efficient coordination of responses by various SBA program offices, the IG, and SBA's Suspension and Debarment Official (SDO). The Task Force

is also implementing a series of tools and procedures to measure and track our enforcement results. The table below describes some of those results.

Fiscal Year	Suspensions	Proposed Debarments	Debarments	Total
2008 ¹		2		2
2009	2	6	2	10
2010	6	7	0	13
2011	15	9	7	31
2012	8	16	6	30
2013	4	9	0	13
Total	35	49	15	99

We realize, however, that the onus of these efforts does not rest only in the GCBD office. The strategy and efforts described in my testimony reflect an integrated approach that utilizes resources across GCBD, our General Counsel's Office, our 68 District Offices and others. Specifically, SBA has been educating its employees on ways to detect wrongful behavior, and what to do when they uncover it. The training also provides employees with an understanding of the numerous tools that SBA can use to combat fraud. To this end, the Task Force has provided program specific training to employees in SBA's 8(a) Business Development office, HUBZone office, and SDV Program office. The Task Force has also provided training to most of SBA's size specialists, and all of its Area Directors. SBA plans to continue providing additional training every year.

SBA has also increased its coordination with other agencies. Often procuring agencies and their contracting offices are in a better position to identify possible fraudulent activity by SBA program participants, than SBA. So far, these efforts have been highly effective. For example, our SDO and our HUBZone Program office provided information, advice, and evidence to the Department of the Navy that resulted in the suspension of two firms and three individuals. More recently SBA's SDO worked very closely with the Department of Homeland Security, the Department of the Navy, the Department of the Army, GSA, the Department of Energy, the Department of Justice, and the OIG on a case that has resulted in SBA issuing seven proposed debarments so far, and with several administrative actions being taken by other agencies as well.

As demonstrated by the initiatives and efforts described in this testimony, SBA has taken great strides to strengthen the small business contracting programs and implement a robust strategy to combat fraud, waste and abuse. Work remains to be done to completely eliminate fraud, waste and abuse in our programs, as bad actors, regretfully, still take wrongful advantage of government benefits. While we have made significant progress, we continue to look for ways to

¹ Prior to FY 2008, SBA did not keep separate records for procurement, grants and lending suspension and debarment actions.

identify further opportunities for improvement and to maximize small businesses' access to this important source of revenue so they can do what they do best: create jobs.

Thank you for hearing my testimony today, and I am happy to answer any questions you may have.

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Chairman ISSA. Ms. Tucker.

STATEMENT OF BETH TUCKER

Ms. TUCKER. Chairman Issa, Ranking Member Cummings and distinguished members of the committee, my name is Beth Tucker, and I'm the Deputy Commissioner for Operations Support at the Internal Revenue Service. I appreciate the opportunity to appear before you today.

I have been an IRS employee for 29 years. I started my IRS career in 1984 as a revenue agent. I am very proud of my government service, and it is an honor for me to work alongside the dedicated men and women of the Internal Revenue Service.

Our agency is vital to the functioning of government and keeping our economy strong. In our role as tax administrators, we collect 92 percent of all Federal receipts, and last year we issued more than \$330 billion in refunds to individual taxpayers.

In my role as Deputy Commissioner, I oversee the support functions of the Internal Revenue Service, including technology, human capital, budget, real estate, physical security and procurement.

In February, the committee sent the Department of Treasury a letter raising questions about two contracts that the IRS awarded in December 2012 to Strong Castle, one of the thousands of vendors that IRS does business with. One of the contracts was for computer equipment. Let me be clear: We have made no awards or purchases under that contract. The other involves licensing and product support for IBM software that is in use across the enterprise at IRS.

Upon receipt of the committee's letter, I immediately referred the matter to the Treasury Inspector General for Tax Administration. It's important to note that investigation is still ongoing.

In mid-May, I was informed by TIGTA about inappropriate and unacceptable personal text messages sent by one of our procurement managers, Greg Roseman, to contractors doing business with the IRS from his personal phone. As soon as I became aware of this situation, I took steps to have Mr. Roseman reassigned to a non-supervisory position that does not involve the awarding or administration of contracts, pending the outcome of the TIGTA investigation. And then just yesterday the committee released information related to this matter that the Internal Revenue Service had not been previously apprised of. This new information is deeply troubling, and it raises additional questions that TIGTA and the Internal Revenue Service must investigate.

Let me be clear: These types of communications should not, should not occur between a procurement employee and a contractor. We expect all of our employees to act with professionalism and integrity.

We are taking steps to separate the IRS from any ongoing business relationship with Strong Castle, subject to our need to safeguard our mission-critical resources.

Under the teaming agreement with IBM that has been talked about in the days since the report was mis—was issued, there's a number that—that's rolling around about Strong Castle receiving \$500 million potentially in award from that contract. Let me be clear: Strong Castle has not received anywhere near that amount of money from the software teaming arrangement. In fact, 98 per-

cent of the value of that contract, if—if it was awarded, would go direct to IBM. But as I mentioned, we are taking steps to sever this relationship with Strong Castle.

In response to the committee's February letter, I also directed officials within our procurement office and Office of Chief Counsel to review the documentation and correspondence related to these two contracts.

In addition, as a result of the issues that have surfaced from the committee inquiry, we're doing a top-to-bottom review of procurement policies and procedures, everything from internal controls to business processes and staffing practices. I've also asked the Department of Treasury to expand its routine assessment of IRS procurement to include a review of small business programs.

Based on the troubling information that we have received, we will also further enhance employee training with regard to ethics, with a focus on gift rules, conflicts of interest, impartiality and the appearance of impropriety, and issues of official position.

Let me be clear that I have not seen anything within our procurement organization, and I think this is also backed up by the extensive interviews the committees have done with a host of IRS procurement officials, inappropriate behavior on the part of any other IRS procurement employee. These are 400 hardworking—and, Mr. Chairman, as you mentioned, our procurement community has a strong ethics and wants to support our agency.

Bottom line, we will continue to work with the committee to provide you with updates on the results of our continuing review in partnership with TIGTA. And we also—we also would implore the committee to please share with us the full set of information that you have obtained in your interviews, because I do believe it would greatly assist the Internal Revenue Service as well as the Treasury inspector general in bringing this matter to conclusion.

With that, I conclude my statement, and I'm happy to answer any questions.

Chairman ISSA. Thank you.

[Prepared statement of Ms. Tucker follows:]

**WRITTEN TESTIMONY OF
BETH TUCKER
DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
ON IRS PROCUREMENT
JUNE 26, 2013**

Introduction

Chairman Issa, Ranking Member Cummings and Members of the Committee, thank you for the opportunity to testify on the work being done by the IRS Office of Procurement to support our operating divisions in carrying out the mission of the IRS.

In Fiscal Year (FY) 2012, the IRS processed more than 230 million individual and business returns, collecting \$2.5 trillion for the Federal Government and issuing \$373 billion in taxpayer refunds. These and other activities could not have been accomplished without the support of the Office of Procurement (IRS Procurement), which helps us obtain the technology and other tools needed to serve the American taxpayer. IRS Procurement delivers the IRS' acquisition planning, contract award and contract administration services, which enable our agency to provide taxpayers with help in understanding and meeting their tax responsibilities.

In FY 2012, IRS Procurement completed 17,402 contract actions, valued at \$1.9 billion. That total includes 6,146 IT-related actions made to 827 vendors, valued at \$1.4 billion. It is important to note that small businesses in all 50 states, received IRS procurement dollars last year. Numerous contract awards also fulfill important Government-wide procurement goals. For example, 546 of our contract actions to 78 different vendors -- approximately 4 percent -- went to businesses on the Small Business Administration's (SBA) list of Historically Underutilized Business Zone (HUBZone) businesses.

IRS Procurement follows not only bureau policies and procedures in the acquisition process, but also rules established by the Department of the Treasury (Treasury) and the Federal Acquisition Regulation (FAR). The IRS uses a number of different acquisition approaches and contract types to fulfill its requirements, including Blanket Purchase Agreements (BPAs), which may be established under any General Services Administration (GSA) contract. As a purchasing option, GSA Schedules are an efficient and convenient acquisition approach. Using a GSA contract allows ordering activities to benefit from additional price discounts, expanded opportunities for contractors, elimination of redundant effort by utilizing a single contracting vehicle that fulfills complex or ongoing needs, reduction of administrative time and paperwork, expanded business opportunities for underrepresented groups and help for procuring agencies in reaching various contracting goals.

The IRS has a proven history of obtaining excellent contract pricing and value. Between FY 2010 and FY 2012, the IRS achieved \$160.5 million in "hard" procurement savings as a direct result of contract negotiations. Over that same time period, we achieved \$188.2 million in "soft" procurement savings, which involves reducing or eliminating future costs as a result of streamlined processes.

Government-wide Contracting Goals

The work done by the Office of Procurement is actually broader than simply acquiring goods and services for the IRS. Under federal regulations, IRS Procurement is also charged with making a strong effort to procure from small businesses, particularly those in various socioeconomic categories, including small disadvantaged businesses, women-owned businesses, service disabled veteran-owned business and HUBZone businesses. The IRS is committed to its Small Business Program, which generates opportunities for small businesses to create jobs and drive our economy forward. Owners of these small businesses include men and women who have bravely served our country in the military and have important technical expertise that can be of significant help to federal agencies in general and the IRS in particular.

The SBA establishes Government-wide goals for procurement awards to small business and those in socioeconomic programs, and Treasury establishes bureau-specific goals as well. In our efforts to determine the extent to which small businesses and businesses in socioeconomic programs should be awarded procurement contracts, we are guided by various federal rules and policies. For example, the GSA has stated that it strongly supports the participation of all categories of small business concerns in the GSA Schedules program. In addition, the FAR authorizes agencies to contract with small businesses and firms in certain socioeconomic categories using set-aside orders against task order contracts to small business concerns, or using socioeconomic status as an evaluation factor when awarding orders under the GSA Schedule contracts.

The Strong Castle Contract Awards

Since FY 2012, the IRS has been doing business with Strong Castle, Inc. Strong Castle is certified as a Service Disabled Veteran Owned Small Business (SDVOSB), and was also certified as a HUBZone business until it was decertified by the SBA as of May 23, 2013. Strong Castle has provided support to the IRS in program management, and logistics support, and has had a record of delivering in accordance with contract terms and conditions.

In February of this year, this Committee sent a letter to Treasury raising questions regarding two IT-related BPAs that the IRS awarded to Strong Castle in December 2012:

- Computer equipment. One of the BPAs in question was for computer equipment and accessories for use by IRS, as well as all of Treasury. Strong Castle was

awarded a contract with a total potential value of \$79 million, and the IRS projected to achieve \$20 million in savings over the five-year contract, as compared to GSA Schedule pricing. After this contract was awarded, two other contractors who bid unsuccessfully challenged it, but the award was upheld by the Government Accountability Office (GAO). The IRS has made no purchases under this BPA.

- IBM software. The second BPA in question is an IBM Software Relationship Offering (SRO) involving licensing and product support for the IBM suite of products. This BPA, which was not subject to a protest, calls for the software, maintenance and services to be deployed enterprise-wide at all tiers from servers to desktops and laptops. The BPA, with an estimated value of \$266 million, replaced a previous contractual vehicle and has been projected to achieve savings of approximately \$92 million over the five-year contract period, as compared to GSA Schedule pricing. While 98 percent of the estimated value of this contract will flow to IBM, it is important to note that the work performed by Strong Castle fills a critical program management and logistics role that has been proven to be more efficient and effective in similar contracting efforts in the past. This model enables smaller firms to gain critical experience with both the IRS and large firms, often enabling them to grow both their internal capabilities and their revenue.

The Committee's inquiry involved whether improper conduct occurred between an IRS Procurement manager and Strong Castle, and whether that conduct would have led to the 2012 awards being steered to Strong Castle in violation of federal rules. The Committee also questioned whether Strong Castle improperly obtained certifications as a HUBZone business and a SDVOSB.

Upon receipt of the Committee's February letter regarding Strong Castle, I immediately referred the matter to the Treasury Inspector General for Tax Administration (TIGTA), which opened an investigation that is still underway. At my direction, officials with IRS Procurement and the IRS Office of Chief Counsel (Chief Counsel) have reviewed the documentation and correspondence related to the contracts under investigation and at this point have not seen or otherwise been made aware of any evidence of steering contracts to Strong Castle or any statutory or regulatory violations in connection with the award of these contracts. In addition, multiple levels of IRS leadership spoke with the manager in question regarding this inquiry and were assured that there was no improper relationship.

After receiving the Committee's February letter, the IRS also contacted the SBA to clarify Strong Castle's status as a qualified HUBZone business. Subsequently, the SBA decertified Strong Castle, effective May 23, 2013, noting that the company may not have met HUBZone qualifications on December 7, 2012. Following receipt of the decision, the IRS sought clarification from the SBA as to whether Strong Castle was considered a qualified HUBZone business in December 2012, when the two contracts in question were awarded. The SBA responded that it did not have the authority in this

circumstance to retroactively address Strong Castle's HUBZone status, and it reaffirmed that Strong Castle remained on the SBA's approved list of HUBZone businesses until the decertification was effective on May 23, 2013.

Because some of the information in the decision by the SBA to decertify Strong Castle as a HUBZone business calls into question the validity of the company's HUBZone status as of December 7, 2012, the IRS will not issue any future orders under the BPA for computer equipment. We do, however, have a critical and ongoing need for the services provided under the IBM/SRO BPA with Strong Castle, and failure to continue with this BPA would have significant implications and create critical operational challenges in the immediate term for the IRS. Thus, absent a finding of fraud or other wrongdoing by Strong Castle, we are continuing with this BPA. However, we are actively exploring other options to obtain these critical services through alternative means in the future.

Let me turn now to our actions in regard to the personnel matter. On May 15, 2013, TIGTA informed me that it had uncovered text messages sent to contractors from the personal phone of the IRS Procurement manager I mentioned earlier in my testimony. These messages indicated that this manager had a personal relationship with the contractors. From what has been shared with me to date, these messages are inappropriate and unacceptable. We expect all IRS employees, including those involved in procurement, to act with the highest ethical standards, and we operate IRS Procurement from an underlying foundation of integrity. Therefore, based on the information provided to us by TIGTA, I took immediate steps to have the manager reassigned to a non-supervisory position that does not involve the awarding or administration of contracts, pending the outcome of TIGTA's investigation.

Some of the inappropriate personal communications that have come to our attention were between this IRS Procurement manager and the principal owner of Strong Castle. Though we are not aware of any evidence that these communications inappropriately influenced the IRS' decision to contract with the company, we are concerned about the tone of the communications as well as the fact that the communications occurred between a contractor doing business with the IRS and an IRS Procurement official. These types of communications between the IRS and its vendors should not occur. We are taking the appropriate management steps to ensure that the IRS' relationship with Strong Castle is managed more appropriately, and we will re-emphasize to all IRS Procurement staff the ethics rules, including the rules regarding the appearance of impropriety and recusal.

Enhanced IRS Procurement Controls

As a result of the questions raised about the Strong Castle awards, the IRS has taken and is continuing to take a number of actions to ensure that all activities in connection with procurement are proper and comply with the applicable laws and regulations.

As noted above, IRS Procurement officials have reviewed all documentation and correspondence related to the contract awards in question to ensure proper procedures were followed. Procurement officials have also reviewed the FAR, OFPP memoranda, Treasury directives and IRS policies to ensure compliance with all Small Business program requirements. Additionally, we have asked Treasury's Office of the Procurement Executive to expand its regular, routine assessment of IRS Procurement, to include a review of our Small Business Program requirements to ensure compliance with FAR and the OFPP memoranda. We expect that expanded review to be completed by the end of July.

We are also conducting an internal review focusing on overall procurement policy and processes, to include sampling of existing work products, training and business process, internal controls and reporting, segregation of duties and staffing practices, and the status of audit items and recommendations from entities that provide oversight. The target completion date for this peer review is September 2013.

In addition, Chief Counsel will continue to conduct an annual training course for all IRS Procurement officials that focuses on gift rules, conflicts of interest, impartiality and the appearance of impropriety, misuse of official position and other ethics issues.

Conclusion

Mr. Chairman, Ranking Member Cummings, thank you again for the opportunity to appear before the Committee. The IRS remains committed to ensuring that our procurement of goods and services follows all agency and federal regulations and is done efficiently, effectively and with the highest ethical standards. We will continue reviewing and enhancing our controls and increase training of procurement staff as needed. In that way, IRS Procurement will continue to support the efforts of the IRS operating divisions in the work they do to carry out the mission of the IRS to enforce the tax laws and provide excellent taxpayer service. This concludes my statement, and I would be happy to answer your questions.

Chairman ISSA. And I will break with tradition just to note, since you made a direct request, that it is our intention to share fully with the IG this information. I must admit that it's been a one-way street. We're still waiting on an awful lot of documents from the IRS that are long overdue.

Mr. Sisk.

STATEMENT OF WILLIAM A. SISK

Mr. SISK. Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. My name is Bill Sisk, and I am the Acting Deputy Commissioner of GSA's Federal Acquisition Service. I have spent over 20 years at GSA. I started at GSA's regional office in Atlanta in 1990, and I have served in a number of management positions, including Assistant Regional Administrator and Regional Commissioner. In my capacity as Regional Commissioner, I represented GSA's Assisted Acquisition Services, Network Services and Personal Property. I have also served as Assistant Commissioner in the Office of General Supplies and Services within the Federal Acquisition Service and was appointed to the U.S. AbilityOne Commission, which is a unique program that provides employment opportunities for individuals who are blind or other—or who have other significant disabilities.

I appreciate the opportunity to appear here today to discuss GSA's information technology Schedule 70 program and the process by which GSA reviews Schedule 70 applications.

IT Schedule 70 is the largest, most widely used acquisition vehicle in the Federal Government. Schedule 70 is an indefinite delivery/indefinite quantity multiple award schedule, providing direct access to IT products and services from private-sector partners around the country.

There are currently 4,853 businesses under Schedule 70, and 4,172 of these, more than 85 percent, are small businesses. Many of these small businesses have socioeconomic designations: 720 are 8(a), 128 are HUBZone, 381 are Service-Disabled Veteran-Owned, 333 are Veteran-Owned, and 1,027 are Women-Owned.

Through June of fiscal year 2013, about \$11.5 billion worth of procurement has gone through Schedule 70, and \$4.5 billion of that, 39 percent, went to small business.

Schedule 70 has helped Federal agencies save time and money while ensuring a good value and the avail—in the available goods and services. In addition, Schedule 70 is one of the two schedules that is available to State and local governments through the cooperative purchasing program, allowing them to leverage the buying power of the Federal Government to procure IT goods and services at competitive prices.

By allowing our partner agencies to purchase from preapproved vendors, they can receive goods and services faster. While having a schedule contract is not the only way to do business with the government, having a schedule contract allows both vendors and agencies to cut down on administrative costs.

Cost savings are also generated through prenegotiated price ceilings, which provide significant discounts from commercial pricing and serve as a starting point for additional competition and negotiations.

GSA has an established process by which to evaluate applications and make a determination of whether or not to approve businesses to get on schedule. Over the past 3 years, GSA has processed appropriately 2,800 applications for Schedule 70. Currently the average application processing time is approximately 110 days.

Contractors can apply through GSA's eOffer system. eOffer provides an online, paperless contracting environment and a step-by-step process that complies with the Federal acquisition regulation. After an offer package is submitted electronically in your system, it is then assigned to a contracting officer or contract specialist who reviews the package for completeness. After the initial review, the contracting officer or contract specialist sends the offerer an administrative letter identifying any areas for which additional information is required.

When a package is complete, the contracting officer or contracts—contracting specialist conducts a responsibility determination using FAR Part 9, together with GSA's in-house pricing tool, or by submitting a Standard Form 1403 to GSA's Office of Credit and Finance for review and approval.

In the review the contracting officer or contracting specialist will also utilize the system for award management to review an offerer's representations, certifications, past awards and performance, and to ensure that all information is correct, accurate and complete.

After the responsibility determination is complete, the CO or CS prepares a prenegotiation memorandum outlining negotiation strategy and any remaining deficiencies. If negotiations are successful, a final proposal revision letter is sent to the offerer.

If the offerer accepts the FPR, the CO or CS conducts a final review of the offer and prepares and finalizes the price negotiation memorandum. After all the required forms and additional information are completed and signed, the CO or CS enters the offer into our system and prepares a package to send to the vendor.

GSA's Schedule 70 can be an important tool in meeting the IT needs of Federal agencies, and GSA has an established process to thoroughly review these applications in a timely fashion.

I appreciate the opportunity to be here today, and I would be happy to answer any questions you have. Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Sisk follows:]

WRITTEN TESTIMONY OF
BILL SISK
ACTING DEPUTY COMMISSIONER
FEDERAL ACQUISITION SERVICE
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JUNE 26, 2013

Good morning Chairman Issa, Ranking Member Cummings and Members of the Committee. My name is Bill Sisk and I am the Acting Deputy Commissioner of GSA's Federal Acquisition Service.

I have spent over twenty years at GSA. I started in GSA's Regional office in Atlanta in 1990 and have served in a number of management positions including Assistant Regional Administrator and Regional Commissioner. In my capacity as Regional Commissioner, I represented GSA's Assisted Acquisition Services, Network Services, and Personal Property. I have also served as Assistant Commissioner in the Office of General Supplies and Services within the Federal Acquisition Service and was appointed to the U.S. AbilityOne Commission which is a unique program that provides employment opportunities for individuals who are blind or have other significant disabilities.

I appreciate the opportunity to appear here today to discuss GSA's Information Technology (IT) Schedule 70 program and the process by which GSA reviews Schedule 70 applications.

IT Schedule 70 -

IT Schedule 70 is the largest, most widely used acquisition vehicle in the federal government. Schedule 70 is an indefinite delivery/indefinite quantity (IDIQ) multiple award schedule, providing direct access to IT products and services from private sector partners around the country. There are currently 4,853 businesses under Schedule 70 and 4,172 of these, more than 85 percent, are small businesses. Many of these small businesses have socio-economic designations: 720 are 8(a), 128 are HUBZone, 381 are Service-Disabled Veteran-Owned, 333 are Veteran-Owned, and 1,027 are Women-Owned. Through June of Fiscal Year 2013, about \$11.5 billion worth of procurement has gone through Schedule 70, \$4.5 billion (39 percent) of which went to small business.

Schedule 70 has helped Federal agencies save time and money while ensuring a good value in the available goods and services. In addition, Schedule 70 is one of the two schedules that is

available to state and local governments through the cooperative purchasing program, allowing them to leverage the buying power of the Federal Government to procure IT goods and services at competitive prices.

By allowing our partner agencies to purchase from pre-approved vendors they can receive goods and services faster. While having a schedule contract is not the only way to do business with the Government, having a schedule contract allows both vendors and agencies to cut down on administrative costs. Cost savings are also generated through pre-negotiated price ceilings which provide significant discounts from commercial pricing and serve as a starting point for additional competition and negotiations.

Process of Getting on Schedule 70 -

GSA has an established process by which to evaluate applications and make a determination of whether or not to approve businesses to get on Schedule. Over the past three years, GSA has processed approximately 2,800 applications for Schedule 70. Currently, the average application processing time is approximately 110 days.

Contractors can apply through GSA's eoffer system; eOffer provides an online, paperless contracting environment, in a step-by-step process that complies with Federal Acquisition Regulation.

After an offer package is submitted electronically into our system, it is then assigned to a contracting officer (CO) or specialist (CS) who reviews the package for completeness. After the initial review, the CO/CS sends the offeror an Administrative letter identifying any areas for which additional information is required.

When a package is complete, the CO/CS conducts a responsibility determination using FAR Part 9 together with GSA's in-house pricing tool or by submitting a Standard Form 1403 to GSA's Office of Credit and Finance for review and approval. In the review, the CO/CS will also utilize the System for Award Management to review an offeror's representations, certifications, past awards and performance, and to ensure that all information is current, accurate and complete.

After the responsibility determination is complete the CO/CS prepares a Pre-Negotiation Memorandum outlining negotiation strategy and any remaining deficiencies. If negotiations are successful a Final Proposal Revision (FPR) Letter is sent to the Offeror.

If the offeror accepts the FPR, the CO/CS conducts a final review of the offer and prepares and finalizes the Price Negotiation Memorandum. After all the required forms and additional information are completed and signed, the CO/CS inputs the offer into our system and prepares a package (approval letter, price list, and FPR), to send to the vendor.

Conclusion -

GSA's Schedule 70 can be an important tool in meeting the IT needs of Federal agencies, and GSA has an established process to thoroughly review these applications in a timely fashion.

I appreciate the opportunity to be here today and I would be happy to answer any questions you have. Thank you.

Chairman ISSA. Mr. Castillo.

STATEMENT OF BRAULIO CASTILLO

Mr. CASTILLO. Chairman Issa, Ranking Member Cummings and members of the committee, my name is Braulio Castillo. I am president and CEO of Strong Castle, Inc.

In January 2012, my wife and I purchased a small company called Signet Computers, Inc. At that time Signet had over 15 years of experience as a government contractor. Because I have significant experiencing serving the IT needs of IRS, our plan was to transform Signet into a small business that initially focused on IRS IT procurements.

When we considered how we could best position the company to support the agency, we came to learn that the IRS desired to award contracts to small businesses, and decided to pursue HUBZone and Service-Disabled Veteran-Owned Small Business credentials. We have never received any improper preferential treatment, and we have competed fairly for every IRS contract that we have received.

In the short time frame that we've owned Strong Castle, our company has made meaningful contributions to the IRS mission and offered the government cost-effective solutions to very difficult problems. We've also been instrumental in forming teams with large software and hardware suppliers and the IRS.

In order to improve the company's competitive posture, in early 2012, as we began working with the Department of Veteran Affairs and the Small Business Administration to have Strong Castle qualified as a Service-Disabled Veteran-Owned Small Business Concern and a HUBZone Business Concern. We understood that these credentials were important because the IRS's increased focus on awarding contracts to small business. In order to achieve small business participation goals, the IRS drafted some solicitation to give favorable consideration to qualified SDVOSB and HUBZone concerns.

In order to compete, we approached the VA and the SBA to apply for SDVOSB verification and HUBZone certification. We worked closely with the VA and the SBA throughout the application process. For example, we attended multiple HUBZone boot camps, presentations at which representatives of the HUBZone office were speakers. After meeting them, we continued to communicate frequently and regularly with them, often on a daily basis. The SBA advised us on all aspects of our HUBZone qualification, including the establishment of our principal office in a HUBZone and the hiring of college student employees. Because we believed the HUBZone status would be a significant benefit to the company, we consulted with the SBA on every detail of our application and plans.

We worked diligently, at enormous personal and financial expense, to cooperate with the investigation and to respond to all of the committee's requests for documents. So far we've produced over 20,000 documents, including business records, email communications, text messages and personal information.

The cost of our effort to cooperate with the committee has been tremendous. The mischaracterization of the facts have caused

Strong Castle to lose contracting partners, lines of credit, and goodwill among our important customers. It has hurt our reputation.

Having responded to the committee's request for documentation, I believe that we've addressed the central issues of the interests of the committee. First, it is not true that Strong Castle received \$500 million in IRS contracts. Strong Castle successfully competed for blanket purchase agreements, pursuant to which the IRS may or may not issue subsequent orders.

In reality, Strong Castle's received from the IRS valued contracts of approximately \$50 million, for which, as Ms. Tucker previously mentioned, 49 million went to the large business providers. Of that amount—and approximately 1 million to Strong Castle. Last year, our company lost approximately \$140,000.

Second, it is simply not true that Strong Castle had no track record of past performance on government contracts. The company that we purchased had experienced contracting with the government, and I personally had worked with the IRS for almost 15 years. My prior experience is directly relevant to the work that we perform at the IRS. As a company, Strong Castle is uniquely qualified to serve the IRS based on our years of past performance.

Third, Strong Castle has not received inappropriate preferential treatment from the IRS. We competed fairly for each blanket purchase agreement and any contract order that we received. To my knowledge, Strong Castle has never received any contract award to—as a result of inappropriate preferential treatment.

Fourth, Strong Castle has been entirely open, truthful and forthcoming with the SBA. Because obtaining HUBZone status was significantly important to the company, we took extreme care to work closely in consultation with the HUBZone office and sought approval and guidance throughout the certification process.

Strong Castle has not sought, nor has it received, unfair advantage in its pursuit of any government contract. We are a responsible small business. Unfortunately, other companies are able to use status challenges as competitive weapons against us.

Despite these challenges, Strong Castle remains committed to delivering results as a valued small business partner to the United States and the IRS, as I have done for nearly 15 years.

Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Castillo follows:]



**Opening Statement of Braulio Castillo
President and CEO
Strong Castle, Inc.**

June 25, 2013

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

My name is Braulio Castillo. I am the President and Chief Executive Officer of Strong Castle, Inc., and I am pleased to have the opportunity to address the House Oversight and Government Reform Committee on the subject of Strong Castle's contracting practices with the Internal Revenue Service.

Company Background

In January 2012, my wife and I purchased a small company called Signet Computers, Inc. ("Signet"). At the time of the purchase, Signet had over fifteen years of experience as a government contractor. Because I personally have fifteen years of experience serving the IT needs of the IRS, our plan was to transform Signet into a small business that focused initially on IRS IT procurements.

When we considered how we could best position the Company to support the agency, we came to learn that the IRS desired to award contracts to small businesses, and decided to pursue HUBZone and Service-Disabled Veteran-Owned Small Business (or "SDVOSB") credentials in order to increase our competitive position.

Soon after we purchased Signet, we changed the name of the company to "Strong Castle, Inc.," which reflects the English translation of my last name.

We have never received any improper preferential treatment, and have competed fairly for every IRS contract that we have received. In the short time that we have owned Strong Castle, I believe that the Company has made meaningful contributions to the IRS's mission, and offered the government cost-effective solutions to very difficult problems. We also have been instrumental in forming teams with large software suppliers and the IRS.

SDVOSB and HUBZone Applications

In order to improve the Company's competitive posture for small business contracts, in early 2012, my wife and I began working with the Department of Veterans Affairs and the Small

Business Administration to have Strong Castle qualified as a Service-Disabled Veteran-Owned Small Business Concern and a HUBZone Small Business Concern.

We understood that these small business credentials were important because of the IRS's increased focus on awarding contracts to small businesses. In order to achieve high internal small business participation goals, the IRS drafted certain of the agency's solicitations to give favorable consideration to qualified SDVOSB and HUBZone concerns.

In order to compete with other small businesses, we approached the VA and the SBA to apply for SDVOSB verification and HUBZone certification. We worked closely with the VA and the SBA throughout the application process. For example, we attended multiple HUBZone "boot camp" presentations at which Mariana Pardo and Brenda Washington of the SBA's HUBZone office were speakers. After meeting Ms. Pardo and Ms. Washington, we continued to communicate frequently and regularly with them, and often on a daily basis.

The SBA advised us on all aspects of HUBZone qualification, specifically including the establishment of a principal office in a HUBZone, and the hiring of college student employees. Because we believed that HUBZone status would be a significant benefit to the company, we consulted with the SBA on every detail of our applications and plans. The SBA approved Strong Castle's HUBZone application on June 22, 2012.

At the time, we believed that we were acting prudently by maintaining close communications with the SBA and seeking its guidance. As we now know, our reliance on the HUBZone regulations and SBA's guidance was insufficient to protect us from the volatile business and political environment of the day. Ultimately, our participation in these small business programs has caused our Company and our family to face intense and costly scrutiny from the Government Accountability Office, from Congress, from the press, and from the SBA.

Indeed, last month, the same individuals at the SBA who helped shape our HUBZone applications and strategy issued a decision decertifying Strong Castle from the HUBZone program. We believe that the substance of this enforcement action reflects a new bias against the Company, and we are working to address the issue with the Ombudsman.

Cooperation by Strong Castle

Since receiving copies of the Committee's February 20, 2013 letter to Acting Treasury Secretary Wolin, we have worked diligently and at enormous personal and financial expense to cooperate with the investigation, and to respond to all of the Committee's extensive requests for documents. Thus far, we have provided more than 20,000 documents, including business records, e-mail communications, text messages, and even the college registration papers and class transcripts of our student employees.

The cost of our efforts to cooperate has been tremendous. The mischaracterization of the facts has caused Strong Castle to lose contracting partners, lines of credit, and goodwill among our important government customers. It has hurt our reputation.

The Corrected Record

Having responded to the Committee's requests for documents and information, I believe Strong Castle has addressed the central issues of interest to the Committee that are reflected in the February 20 letter to Acting Secretary Wolin.

1. First, it is not true that Strong Castle received \$500 million in IRS contracts. Strong Castle has successfully competed for Blanket Purchase Agreements pursuant to which the IRS may or may not issue subsequent orders to Strong Castle. In reality, Strong Castle has received contracts from the IRS valued at approximately \$50 million in total. Of that amount, approximately \$49 million has gone to Strong Castle's suppliers and other partners, and approximately \$1 million has gone to Strong Castle. Last year, Strong Castle lost approximately \$138,000. Strong Castle's losses this year will be even greater due in part to the costs of defending the GAO protests and cooperating with this investigation.
2. Second, it is simply not true that Strong Castle has no "track record or past performance" on government contracts. As I mentioned, the company that we purchased in 2012 had more than fifteen years of contracting with the government, and I personally have worked with the IRS for almost twenty years. My prior experience at Xerox Corporation, Oracle/Sun Microsystems, Government Acquisitions, Inc., and Capgemini Government Solutions is directly relevant to the work that Strong Castle now performs for the IRS. As a company, Strong Castle is uniquely qualified to serve the IRS based upon our years of past performance.
3. Third, Strong Castle has not received inappropriate preferential treatment from the IRS. We competed fairly for each Blanket Purchase Agreement and contract order that we received. To my knowledge Strong Castle has never received any contract award as a result of inappropriate preferential treatment.
4. Fourth, Strong Castle has been entirely open, truthful, and forthcoming with the SBA in connection with the HUBZone application process. Because obtaining HUBZone status was significantly important to the Company, we took extreme care to work in close consultation with the HUBZone office, and sought approval and guidance for every action that we took during the certification process. All of our actions were taken in consultation with the SBA, and we have never sought to deceive the government.

Conclusion

Strong Castle has not sought nor has it received any unfair advantages in its pursuit of any government contract, including those that the Company has pursued at the Internal Revenue Service.

We are a responsible small business, and have expended a great deal of time, effort, and money to pursue our HUBZone and SDVOSB credentials. In so doing, we have worked closely with

the VA and the SBA, and have endeavored to remain qualified under the complex terms of both small business programs.

Unfortunately, other companies are able to use status challenges as competitive weapons in their efforts to overturn contract award decisions made by agencies pursuant to formal procurement procedures. In this case, Strong Castle has already spent hundreds of thousands of dollars to defend itself in a politically charged environment.

To reiterate:

- Strong Castle was properly awarded all of its IRS Contracts.
- Strong Castle did not receive any inappropriate advantage in pursuing its GSA Schedule Contract.
- Strong Castle was duly verified as a Service Disabled Veteran Owned Small Business by the VA.
- Strong Castle was properly designated as a HUBZone business.

Our critics are other small businesses who are disappointed bidders for the same contracts that were awarded to Strong Castle. We believe that they have used the bid protest process at GAO and the status protest process at SBA to gain business advantages by spurious claims about our qualifications and contracting practices.

These tactics have been successful. The combined pressures and expense of defending multiple bid protests, a proposed HUBZone decertification, and this investigation have gravely harmed our ability to remain in business and serve the government customer.

Despite these challenges, Strong Castle remains committed to delivering results as a valued small business partner to the United States and the IRS, as I have done for nearly fifteen years.

Chairman ISSA. Mr. Castillo, you talked about the experience of your company in 15 years. How many common employees do you have? In other words, how many employees at the—at your firm have been there 15 years?

Mr. CASTILLO. No one has been there 15 years.

Chairman ISSA. Ten years?

Mr. CASTILLO. Of the employees?

Mr. ISSA. Ten years?

Mr. CASTILLO. None of them have been there 10 years.

Mr. ISSA. Five years?

Mr. CASTILLO. I don't believe anyone—well—

Chairman ISSA. One year?

Mr. CASTILLO. One year? All of them have been there 1 year or less. We have—

Chairman ISSA. Wait a second.

Mr. CASTILLO. —January of—

Chairman ISSA. No, no. You made an assertion of prior experience. The fact is, the company you bought and the employees of your current company have nothing in common. So where—I ran a company. I built a company over 20 years. Where is that legacy experience that you are claiming your company has?

Name an employee that, when you bought the company that had never done more than \$250,000 in contracting, name the employee that is part of that experience that is with you here today.

Mr. CASTILLO. Of what timeline, sir?

Chairman ISSA. Well, you claimed 15 years. You bought the company a year and a half ago. How many employees came when you bought the company?

Mr. CASTILLO. Two employees and the owner at the time.

Chairman ISSA. And where are they today?

Mr. CASTILLO. The owner left in September of last year, and one of the two—we bought a small company with two employees. One of them is still there. One—

Chairman ISSA. Okay. Well, I just want the public to understand. You are claiming this experience and legacy, and now you are claiming that, in reality, three employees gross, one was the employer, only one of which is with you today. So, quite frankly, you swore an oath to tell the truth and the whole truth. That is shading the truth pretty close, to claim 15 years of experience with essentially no employees, for all practical purposes.

Ms. TUCKER, our committee, back when we sent the letter to you, or to the Acting Treasury Secretary, and you got involved in it back in February and March, we asked you about this. And, at that time, you said there was no “there” there. Do you stand by that today, in the case of this investigation?

Ms. TUCKER. No, sir, I don't.

Chairman ISSA. Turn your mic on, please.

Ms. TUCKER. No, sir, I—let me just be clear. The information that we have seen about the personal relationship with Mr. Roseman and Mr. Castillo is inappropriate. Mr. Roseman should have recused himself immediately from any involvement whatsoever in any IRS interactions with Strong Castle.

Let me be clear also, and I think as your staff members interviewed extensively IRS procurement officials, that they all stated

on the record that they were unaware of any relationship with Mr. Roseman.

Chairman ISSA. No, I understand. And, you know—

Ms. TUCKER. And—

Chairman ISSA. Ms. Tucker, you can't have it both ways. You can't say you don't know what our people said while your lawyers were in those interviews and then start saying what your people said in our interviews.

So let me use my time more briefly. Just this past Monday, you indicated you were not going to cancel the \$266 million contract to Strong Castle. My understanding a few minutes ago is you now are going to cancel that and put it on hold; it is not so important as to not be reworked. Is that correct?

Ms. TUCKER. Mr. Chairman, what I told members of your staff on Monday was that we were exploring options.

Chairman ISSA. Okay. Well, now, let's get to this part about the money. When you provide a contract, when the Federal Government—and your other witnesses hopefully are helpful—you provide a contract to a disabled veteran, like Mr. Castillo, and in a HUBZone, the IRS, as I understand it, took full credit for this hundreds of millions of dollars as though they went to that company. Isn't that true? You didn't take credit for 1 percent of it going to a disabled veteran and a small business in a HUBZone; you took credit for \$500 million. Isn't that correct?

Ms. TUCKER. Mr. Chairman, Internal Revenue Service followed the—

Chairman ISSA. Ma'am, you're not a witness that I'm terribly thrilled at today because you did ignore this until we pressed and pressed and pressed. The fact is—and I will go to either of the other two witnesses, Mr. Flohr or Mr. Chodos.

When the IRS awards \$500 million, they don't do it on the net that might go, if you will, the skimmed-off-the-top profit, for absolutely no participation in the actual delivery of services. They take the gross amount, don't they? This is scored as hundreds of millions of dollars going to a HUBZone. Isn't that correct?

Mr. CHODOS. Mr. Chairman, the ultimate credit for the contract is for the dollars incurred. And the dollars incurred are gross, so—

Chairman ISSA. Okay. So for the American people here today, one of the frauds on the American people and for us on the dais is we get these report cards talking about hundreds of millions and billions of dollars going to our disabled veterans, hundreds of millions and billions of dollars going into these blighted zones that we are trying to encourage—I call them enterprise zones; HUBZone happens to be one form of it. We are scoring \$500 million. And then somebody comes here—Ms. Tucker, I'm picking on you for a reason—and tries to say, well, it is minuscule.

Our indication is that this contract cost more than it would have cost if it had been competitively bid to the principals. And, clearly, every cent that Mr. Castillo got, from what we can tell, without having a true principal operation—and the witnesses did make it pretty clear they don't go there. The people who had real money don't go there. A few college students show up and surf the Internet looking for potential new contracts. That, in fact, was scored as

hundreds of millions of dollars to help people in blighted areas and to help a disabled veteran, who it turns out played college ball for years and didn't limp or have a problem until he got ready to apply for this special status.

I have a scoring problem here today, and I think my ranking member and everyone on the dais—and, Mr. Flohr, you didn't get a chance, and I'm going to go to the ranking member now.

But bear in mind, it's not about Mr. Castillo per se. He may not have broken a single rule. That's for others to determine under the law. But we were shocked to discover that we are scoring as though we are doing a lot of good for disabled veterans, not people who turn their ankle and have no problem for 27 years until it's time to conveniently become a disabled veteran.

And we were scoring impact to blighted communities, when, in fact, that score is at best fraudulent. We are scoring apparently \$1 million but writing it in as 10 times or 100 times that. So that is part of what this hearing is here today. That is why the ranking member and I are teammates on this.

This is an example of an agency that conveniently had a large contract, may or may not have gotten the best value for the American taxpayer. But, certainly, for the two gentlemen to your left, or your right, Ms. Tucker, they're in a position where, complying with the law, they're, in fact, not seeing you deliver the value appropriately to the American people for these set-aside-type events.

Mr. Cummings?

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. Tucker, I'm going to just pick up where the chairman left off. Help me with this.

You apparently had not made a decision on an IBM contract on Monday. Is that right?

Ms. TUCKER. That's correct.

Mr. CUMMINGS. And—

Ms. TUCKER. We were exploring options. We were troubled, but we had not immediately canceled the contract because the IBM software is critical to our mainframe operation.

Mr. CUMMINGS. I understand. So what happened, what information came to you between Monday and this morning that caused you to say what you said? And when was that decision made to sever the relationships? If I'm misstating it, tell me. I think that's what you said.

Ms. TUCKER. Yeah. So, yesterday afternoon when we received the report from the committee, the procurement executive team and I met. And based on the email exchanges that we're seeing in the report that we had not been made privy to—and, candidly, based on the fact that Mr. Roseman was repeatedly asked by his superiors if he had a personal relationship with Mr. Castillo and Strong Castle and he denied it. And I believe the detail that we saw excerpted in the report has raised considerable concern, that we are in the process of separating our relationship with Strong Castle.

Chairman ISSA. Would the gentleman yield for a second? I will give him additional time.

Mr. CUMMINGS. Sure.

Chairman ISSA. Ms. Tucker, I only want to make sure that the ranking member understands the email you're so horrified about

you gave us. That was part of the discovery. Your organization reads them before they deliver them to us.

Ms. TUCKER. No——

Chairman ISSA. Thank you, Mr.——

Ms. TUCKER. No, sir, that's incorrect. That's not the email that I'm referring to. We did provide emails from the Internal Revenue Service system. The emails——

Mr. CUMMINGS. So the emails that you provided did not lead you——were not enough to get you to feel that there should be a severing. Is that right?

Ms. TUCKER. Correct.

Mr. CUMMINGS. Now, some additional emails came in.

Ms. TUCKER. It's actually text messages.

Mr. CUMMINGS. Text messages, right.

Ms. TUCKER. As I said in my opening statement, it's text messages from——

Mr. CUMMINGS. In the report.

Ms. TUCKER. —Mr. Roseman's personal phone to Mr. Castillo that had not been shared with the Internal Revenue Service and that we were unaware of.

Mr. CUMMINGS. So that basically was the straw that broke the camel's back. Is that correct?

Ms. TUCKER. Yes, sir.

Mr. CUMMINGS. Mr. Chodos, tell me, just very briefly because I've got to talk to Mr. Castillo, tell me how many decertifications you have done, you all have done—do you know?—over the last 4 or 5 years. Can you give us any idea? I'm trying to figure out how unique this is, decertification.

Mr. CHODOS. Thank you, Representative Cummings.

I can get you a full spread for the last 5 years of all decertifications. I believe we decertified approximately 1,500 or 1,600 firms over the course of the last year. Some of those have been due to changes in the HUBZone-qualified census tract maps. Some of those have been due to specific issues with particular companies.

Mr. CUMMINGS. Now, Mr. Castillo, I reviewed your testimony, and I have to admit that I'm troubled because you seem to take no personal responsibility for any of your own actions. In fact, you criticized everyone else but yourself. You even blame your current problems on—let me quote this—“the volatile business and political environment of the day,” whatever that means.

I would like to read from the letter that SBA sent to you on May 23rd, about 1 month ago, formally notifying you that your company's HUBZone status was revoked. Then I would like to get your response.

The SBA letter says that you, “admitted that records provided were false and inaccurate.” I want you to put a pin on that. It says you, “did not provide SBA with reliable and accurate payroll records.” It says you do not have, “adequate internal controls.” It says that you tried to claim that your program manager, “is not an employee at all but rather a contractor.” It says you have, “a facetious attitude with regard to accuracy of records.”

You know, Michael Jackson had the song, "Man in the Mirror"? You need to look in the mirror. It says your employees, "can record time worked as they please." Wouldn't we all like to have that job?

So with all of that, Mr. Castillo, let me now give you a chance to respond. Do you admit that you submitted false records to SBA?

Mr. CASTILLO. SBA did decertify us based on the records, and we have put measures in place to address some of those concerns.

Mr. CUMMINGS. That's not what I asked you. Do you admit that you submitted false records to SBA?

Mr. CASTILLO. Yes.

Mr. CUMMINGS. How do you respond to the other allegations? The SBA letter states that you only corrected these errors, "after being confronted with conflicting evidence presented by SBA." So they weren't problems you were identifying, were they?

Mr. CASTILLO. No, sir. They identified them, and we corrected them.

Mr. CUMMINGS. And so, Mr. Chodos, let me turn to you. You are here representing SBA, so what is your response to Mr. Castillo? Do you stand by your findings?

Mr. CHODOS. Yes, Representative Cummings, the SBA stands by its findings that the decertification was justified under these facts.

Mr. CUMMINGS. And so, going back to you, Mr. Castillo, what do you say about the SBA saying that you did not have adequate internal controls? I mean, what is your response to that? I want to give you an opportunity to respond—

Mr. CASTILLO. Sure. Yes, sir.

Mr. CUMMINGS. —because you—there's some problems here.

Mr. CASTILLO. Yeah. Yes, sir. So they pointed out some inaccuracies, and we've put some corrections in place from a time-recording perspective.

Mr. CUMMINGS. And so you admit that there were some problems with internal controls?

Mr. CASTILLO. Yes, sir.

Mr. CUMMINGS. Now, let me get to something that the chairman talked about that is extremely troubling to me. You know, I told you in my opening statement that I live in an area where black male unemployment is probably 25, 30 percent. I live in a HUBZone-type area where businesses are struggling. So I want the programs to be work properly, as I know the chairman does.

The question is, can you tell me, outside of the Catholic University students and faculty, tell me how many other people outside of those that you employed from the HUBZone?

Mr. CASTILLO. Of our 10 employees, sir, not counting the college students, we have 1 other HUBZone residence.

Mr. CUMMINGS. So you had 10 employees—

Mr. CASTILLO. Yes, sir.

Mr. CUMMINGS. —and are you telling me 9 of them were from Catholic University?

Mr. CASTILLO. No, sir. What I was saying, we have approximately 10 employees. About five of them, per your count, are from Catholic University. One of them is from—not counting the Catholic students, is from a HUBZone.

Mr. CUMMINGS. When did you hire that person?

Mr. CASTILLO. May of this year.

Mr. CUMMINGS. Oh, so you—oh, you just hired her?

Mr. CASTILLO. Yes, sir. We disclosed that to the committee during—

Mr. CUMMINGS. Okay.

Mr. CASTILLO. —my transcribed interview, yes, sir.

Mr. CUMMINGS. Then I guess if you were in my district, the folks that I'm talking about would not—they wouldn't get a job from you unless they were at Catholic University, huh? Hello?

Mr. CASTILLO. No, sir, I would not agree with that characterization.

Mr. CUMMINGS. All right.

Let me ask for a moment, just one other question, Mr. Chairman. Chairman ISSA. Of course.

Mr. CUMMINGS. Mr. Castillo, it seems clear from the evidence that you wanted to take full advantage of the HUBZone program, and not to help D.C. residents or underutilized neighborhoods but to maximize your own profits. During your transcribed interview with the committee staff, you said this, "I knew that HUBZone was important, being from the industry. And so we went at it that way."

That's what you said; is that right?

Mr. CASTILLO. It's—I don't recall saying it, but, yes, I stand by that.

Mr. CUMMINGS. And now, finally, what does that mean? What did you mean by that?

Mr. CASTILLO. We moved our operations from northern Virginia to Washington, D.C., in a certified HUBZone and established our principal office there. That's what I mean by that, sir.

Mr. CUMMINGS. All right.

Thank you very much, Chairman.

Chairman ISSA. Would the gentleman yield for just one moment?

Mr. CUMMINGS. Of course.

Chairman ISSA. Mr. Castillo, just straight yes or no, because we have your interviews, your wife's interview, and so on: Isn't it true that all the Type A people who potentially sell or work on that contract live and effectively work elsewhere, that the testimony of yours, your wife, and other principals is that they don't often go to that principal location, that in fact it isn't manned full-time and that when it is manned it was mostly by college students who were looking for other contract potential and not executing in this contract, that your accounting operation and all those sort of key operations somebody would think as corporate headquarters were never located in that building?

Mr. CASTILLO. So there was a few things in there, so I will try to address them, sir.

So you're right, the principal workers, I think you'd say Type A workers, all work onsite, at the government site. They don't report to an office like in many other companies—

Chairman ISSA. Right. So the—maybe I will cut this down because I'm really on borrowed time.

Mr. CASTILLO. Yes, sir.

Chairman ISSA. You don't work out of that office. Your wife doesn't work out of that office. Those previous individuals that were from the previous company don't even live in the area. One

lives in Boston; one lives in Florida. That, in fact, when we really look at it, the college—during the execution of this contract thus far, until a few day ago, basically, college students showed up there and surfed a few sites, which was not a direct part of any execution of this contract. Isn't that true, that the HUBZone headquarters was in name only, it was not your principal place that you did business executing these contracts?

Mr. CASTILLO. By "you" do you mean me, sir?

Chairman ISSA. I mean you, your wife, or anybody other than these college students.

Mr. CASTILLO. Yeah, I work out of our Leesburg HUBZone location, and my wife works out of our home as her—

Chairman ISSA. In the richest county in the country, Loudoun, right?

Mr. CASTILLO. Yes, sir, I think I read that—tending to our five children, four of them which are under the age of 10 or under.

The college students and any other worker that reported to an office reports to the Washington, D.C., office, which is why SBA established that as our principal office. We did have, as you mentioned, an employee from Florida, a former IRS executive, who lived there, who retired to that area. And the gentleman that you're referring to in Boston actually works on a Top Secret facility in Hanscom Air Force Base. So that is located in Boston and onsite at the client site.

Chairman ISSA. Yeah.

Mr. CUMMINGS. Can I ask just one last question—

Chairman ISSA. Of course.

Mr. CUMMINGS.—Mr. Chairman?

Just based on what the chairman just said, I want to remind you that you're under oath, and I want to ask you this question: Don't you think you manipulated this process and frustrated the true purpose of this program?

Mr. CASTILLO. No, sir.

Mr. CUMMINGS. And why do you say that?

Mr. CASTILLO. I don't feel I manipulated it. That's why I said that.

Mr. CUMMINGS. You just admitted that you lied with regard to accuracy of the information.

Mr. CASTILLO. Well, to your point, in a direct yes/no, we provided inaccurate information on our timesheets, not on our payroll statements, which we shared and have corrected since and put processes in place to correct them, sir.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you.

Mr. Jordan? Oh, I'm sorry. Mr. Mica is here.

Mr. MICA. Thank you.

Ms. Tucker, your title is Deputy Commissioner for Operations Support. So you oversee the procurement process for IRS and personnel involved in that?

Ms. TUCKER. Yes, sir.

Mr. MICA. Uh-huh. And you gave a statement I guess pretty much waving the flag in support of some of IRS actions. And I'm sure there are thousands of people who every day get up and do a good job for IRS.

But representing people in a district in Florida, and just anywhere I go, I hear more complaints about the IRS. I think you have been in sort of a meltdown of scandals: the targeting of certain political organizations. We held a hearing a few weeks ago on conferences gone wild, spending with the IRS. I think on the wire today there is a story about credit card abuses. I don't know if you oversee that. Do you see that too?

Ms. TUCKER. Yes. That's part of our procurement organization.

Mr. MICA. Yeah. Well, that, again, is just an embarrassment.

This hearing on the procurement process that, again, has gotten out of hand. I think we have lost great confidence, and probably for very good reason.

It sounds like Mr. Castillo has sort of gamed the system, would you agree?

Ms. TUCKER. Based on my understanding—

Mr. MICA. Well, okay, let me ask you a question. Let's go back to—before the committee contacted you about this, had you or any employees of IRS, had you all been contacted about what was going on with Mr. Castillo and Mr. Roseman?

Ms. TUCKER. Sir, let me—let me—

Mr. MICA. But wait. My question was, before the committee contacted you on the matter of this relationship, were you or any of the employees, if are you aware of them, notified that something was going on with Mr.—

Ms. TUCKER. No, sir.

Mr. MICA. Absolutely no?

Ms. TUCKER. No, sir.

Mr. MICA. Okay. And since then, you have been rather reluctant until you've had the awakening just in the last few days that something was going wrong, had gone wrong here.

Mr. CHODOS, does it sound like SBA was gamed by this player?

Mr. CHODOS. Congressman, it appears, from what we know—

Mr. MICA. Well, he just told you he provided you inaccurate information.

Mr. CHODOS. Yes. And as a—

Mr. MICA. Thank you.

Mr. CHODOS. —result of learning that the information was, in fact, inaccurate, I mean, it's a pretty fundamental—

Mr. MICA. All right.

Mr. CHODOS. —principle that we have certified—

Mr. MICA. So you—

Mr. CHODOS. —they have to provide us accurate information.

Mr. MICA. —you agree, he gamed you.

Now, Mr. Castillo, it appears you also gamed the Veterans Administration. We want our veterans with disabilities to have some special preference and standing. The only incident of disability was in—was it prep school, was it? Was there anything in active military service where you sustained a disability or injury?

Mr. CASTILLO. The injury that I sustained was during my time at the prep school.

Mr. MICA. But that wasn't my question. My question, did you sustain an injury, again, in active military service, or were you disabled during that time?

Mr. CASTILLO. So I—I'm not sure—

Mr. MICA. In active military service. Were you in combat and had an injury where—

Mr. CASTILLO. No, my injury is not combat-related, sir.

Mr. MICA. Okay.

Mr. CASTILLO. It was during my—

Mr. MICA. Mr.—

Mr. CASTILLO. —Active Duty with the—

Mr. MICA. Mr. Flohr, it sounds like he's gamed the system. Would you agree?

Mr. FLOHR. Sir—

Mr. MICA. Come on, tell—yes or no? Has he gamed the system?

Mr. FLOHR. Based on discussions, sir, that we had with your staff last week, we are not able to provide specific information regarding this claim without the release—

Mr. MICA. Okay. It sounds to me, Mr. Flohr, like he has gamed the system. That's not what we intended—what Congress intended. I'm sad that VA can't make that determination and say so publicly.

Let me just also say, Mr. Castillo, you had a few contacts or a number of contacts, either by phone, by text, cell phone text, or other contacts, with Mr. Roseman. How would you—cell phone contacts, were they a few? Many? Texts, a few, many? Meetings, a few, many?

Mr. CASTILLO. I probably have met with him over the last 5 years about 10 times or so. And there were—there were text messages where we provided to the committee as part of the investigation.

Mr. MICA. Well, Mr. Chairman, he just testified, again, a few times—between May and October, you and Mr. Roseman exchanged over 100 telephone calls. Don't you think that that is in excess of what you just testified to?

Mr. CASTILLO. I don't believe they were telephone calls. I think you're referring to text messages; is that right?

Mr. MICA. Well, again, we have phone calls or, through the texting, over 100 messages.

And then, in particular, you had a 21-minute telephone conversation between Mr. Roseman and yourself on the 7th of June, 2012. And to refresh your memory, that was the night before Mr. Roseman sent you the request for a quote for an \$80 million laptop-desktop acquisition.

So, one, you testified or you just indicated you had very few contacts, contrary to over 100 contacts by phone that we have. And, secondly, did you want—and, finally, do you want to comment on your 21-minute conversation with Mr. Roseman prior—

Chairman ISSA. The gentleman's time has expired, but would you please answer?

Mr. CASTILLO. I believe I testified that I met with him about 10 times or so for the last 5 years. I didn't comment on the number. I think I stated that I believe you're referring to text messages versus—that we turned over versus telephone—

Mr. MICA. Mr. Chairman, may I—

Chairman ISSA. Briefly.

Mr. CASTILLO. —cell or phone, text, and meetings—three different.

Chairman ISSA. Duly noted.

Mr. CASTILLO. So I don't know the number of telephone calls. I believe the text messages I'm very much aware with because I met with committee staffers and counsel last week or so and we went over them, or the ones that we'd provided. And I don't recall what the conversation was about on June 7th, sir.

Chairman ISSA. As I go to Ms. Norton, Mr. Castillo, I know Mr. Roseman said there wasn't a friendship. I believe you have repeatedly said there was. You haven't been quite as—you've been on the opposite side of that. So these texts are not unexpected, in that you said you do have a long relationship with Mr. Roseman.

Mr. CASTILLO. I've worked in support of the IRS for about 15 years or so. The last 10 years, I mean, since—

Chairman ISSA. But since 2003 he has been what you would characterize as a friend?

Mr. CASTILLO. I would say a customer. I met him through my previous employer, where they were very, very good friends. And we held a contract there at my previous employer, which was a small business—

Chairman ISSA. Okay, so customer, not friend, is your testimony today.

Mr. CASTILLO. No, sir, I didn't say that. Because I think I'm on record as saying—so we have a business relationship, but I believe he is—that we're friendly or friends. So I'm not changing my testimony that I believe that—

Chairman ISSA. Well, I think Mr. Mica was trying to get to the question based on this communication, because we do have a witness, not here today, who has said to the IRS that you were not friends.

Yes or no, are you friends under your definition of "friends"?

Mr. CASTILLO. Yes, I would think I've been clear—I mean—or I've stated that several—

Chairman ISSA. Thank you. I just want to make sure because I know the Treasury wants to understand the disparity in interpretation of friends between an individual who did not disclose and yourself. And I'm not trying to put anyone on the spot. I just think Mr. Mica deserves a yes or no on that.

Mr. CASTILLO. I'm not sure he asked me if we were friends or if I characterized it. So based on my 10 years of working with him, I would say we have a good business relationship and I would consider him a friend under my definition.

But to be clear, I wish he was here to testify. I'm a small-business owner of 10 or so folks, and I'm here willingly, and I've actively participated. I've attended everything that you've asked me to attend. We've made every employee available to you. We've turned over an immense amount of documents, including the text messages that you reference. And I would say that we fully have cooperated or have tried to do so.

Chairman ISSA. Well—and this is not my time, so, Ms. Norton, if you'd be indulgent for one more moment.

We have no objection to exactly that. From the get-go, you have come in and asserted that you believe you did nothing wrong. One of the reasons for this hearing today is we believed, from an IRS execution of the contract, it was not appropriate. And, you know, we intervened when we believe that.

And, obviously, we have the SBA here today and the Veterans here today because we believe that there needs to be a reform in a portion of the process under which you were given these statuses. And those are the three points here today.

But I do appreciate and I want to note for the record that, yes, from the get-go, you've come in and said, "I don't believe I did anything wrong, I will cooperate," and you have.

Ms. NORTON, thank you for your indulgence.

Ms. NORTON. Yes, and thank you, Mr. Chairman.

Let me preface my question by indicating that when this program was initiated in the late '90s, I think 1997, it was done without hearings. The Republican Senator from Missouri, Chris Bond, inserted it into an SBA reauthorization. And it seemed like a good idea. It seemed to bring together really some of the visions of one of my good friends, the late Jack Kemp, to marry his notions of the market system and capitalism with his concern for the inner city.

By the time the Democrats took control of the Congress, its chair, Nydia Velazquez, was so disgusted with the program because there had been hearings in all of the major cities showing terrible abuse by large companies of the HUBZone program. And some of us went to Nydia and said, well, you know, it's a new President, give him a chance to clean it up.

I don't have any evidence that the program is still like it was when those hearings were held throughout the United States showing that big companies had wholesally abused the notion, but, obviously—and so I do think the program must have improved or else we would've heard more about that by this time. But I can't say the same for what I'm hearing today.

I have to tell you, Mr. Castillo, that this hits a bit close to home. You, of course, don't live in D.C. That's allowed. You're from a wealthy Virginia suburb. That's allowed. You rented a tiny office in Chinatown, and then you recruited students from Catholic University to do the work after you received the contract.

Why didn't you go to Wards 7 and 8, which, of course, is the part of the city—if you were not going to do it in your own HUBZone, which is a part of the city where unemployment is high, it's classically a part of the city where you could've found people to do the work, and fully met the notion embodied in the HUBZone, that people who live in disadvantaged areas would have some investment in the area and could get employment whereas they could not before, why didn't you go to Wards 7 and 8 instead of going to Catholic University?

Mr. CASTILLO. So, ma'am, I don't know the wards very well. I apologize. I'm not well—

Ms. NORTON. Well, you know it well enough to go to Catholic University.

Mr. CASTILLO. Yeah. So—and, ma'am, just to state, the college employees that we hired were hired before we—the awards. We put together two initiatives. One—

Ms. NORTON. Whether they were hired before or after the awards, the purpose of the HUBZone is to hire disadvantaged people. Were these Catholic University students disadvantaged people?

Mr. CASTILLO. They were residents of a HUBZone that we employed.

Ms. NORTON. You say in your testimony, all of our actions were taken in consultation with the SBA, and we have never sought to deceive the government.

Do you believe that hiring college students who go to an expensive private university is in keeping with the goals of this program?

Mr. CASTILLO. Yes, ma'am.

Ms. NORTON. Mr. Chodos, do you believe that hiring students who go to a private university, an expensive one at that, is in keeping with the goals of the program?

Mr. CHODOS. Thank you, Representative Norton.

The answer to your question is this: The HUBZone program, as you have said, is designed to spur investment in and economic development in place-based—

Ms. NORTON. Do you believe that the hiring of students at a private university meets the goals of the HUBZone program?

Mr. CHODOS. We have seen many entities throughout time that hire students. Many students, of course, take on great debt in order to better themselves and their families—

Ms. NORTON. He had hired no students except, until recently—he had hired no employees except students from this zone. And then we learned in May that he did, in fact, hire someone who was not a Catholic University student.

Now, I love Catholic University. I'm trying to marry what the zone is about with the actions that were taken here. And I want to know whether you believe and whether SBA believes this is in keeping with the goals of the program.

Mr. CHODOS. So long as they are residents of the community and—

Ms. NORTON. So, as far as you know, throughout the United States, people are going and finding—people who are, by definition, advantaged because they've gotten to college, which most Americans do not, and they may be hiring college students all over the United States, rather than bona fide residents.

You don't even know that these Catholic University students were residents of the District of Columbia. While they live here, they of course are residents. They eat and live in the dormitories or in a surrounding neighborhood. We're glad to have them. But you don't even know that they are residents of the city or that they meet the notions of "disadvantaged" embodied in the HUBZone itself.

Mr. CHODOS. Well, what we know is what they certify to us, which is that they are residents and are planning to live in the HUBZone—

Ms. NORTON. Well, I'm going to have to ask whether or not you'd be willing to ask HUBZone recipients, HUBZone contract recipients, whether they hire college students so that we will know how widespread this practice is.

Mr. CHODOS. Well, let me say this: We agree with you completely. The purpose of the program is not to focus upon college students; it's to focus upon employment in these places. And—

Ms. NORTON. But you can't say today that that isn't the practice not only of Mr. Castillo but of many like Mr. Castillo across the United States.

Mr. CHODOS. I can say that the practice occurs in various places at various times. I do not have the data, and I can see if the data is available, about exactly how many employees—

Ms. NORTON. I would very much appreciate your seeing if the data is available. I think a simple questionnaire, how many of your employees are college students, would help us to make sure that—the chairman said we wanted to have the needed reforms, but there may be no sense until this case came up that that could amount to an abuse.

Look, I'm not against the college students. I'm saying if it is a systematic practice, you can see what the effect would be if the purpose was to make sure that disadvantaged people in the neighborhood were employed.

So I ask that you submit within 30 days whatever you can find on that.

And one more question, if I may?

Chairman ISSA. Briefly.

Ms. NORTON. Mr. Castillo, you indicated something about most of the money went to the parent company or to the large company, that you made \$1 million, your company made \$1 million. What's the value of your company?

Mr. CASTILLO. Last year we reported \$8 million in sales, and we lost \$140,000 based on those sales.

Ms. NORTON. But you just testified that \$49 million, but your company got \$1 million of that.

Mr. CASTILLO. Yes, ma'am, in gross profits, not in net profits. So—

Ms. NORTON. I would just submit, for an \$8 million company, \$1 million from one contract is very lucrative or, as you said in one of your emails to your wife, pay dirt.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

And I might note for the record that, as a small-business man for many years, if I chose to pay myself no salary, I might make half a million dollars, and if I chose to pay myself half a million dollars, I might make no money. So with Mr. Castillo and his wife as principal employees, I wanted to be clear that the balance sheet and the income statement are somewhat not the same as, let's say, a Fortune 500 company's interpretation of its profits.

Ms. NORTON. That's why I wanted to know the worth of the company.

Chairman ISSA. Yeah. Well, you know, clearly, without these contracts, it will be less.

With that, we go to the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. Ms. Tucker, you've been at the IRS 29 years?

Ms. TUCKER. Yes, sir.

Mr. JORDAN. And you're Deputy Commissioner; is that correct?

Ms. TUCKER. Deputy Commissioner—

Mr. JORDAN. How many Deputy Commissioners are there?

Ms. TUCKER. Two.

Mr. JORDAN. Is there anyone between the Deputy Commissioner and the Commissioner?

Ms. TUCKER. No.

Mr. JORDAN. So you're right near the top?

Ms. TUCKER. Yes, sir.

Mr. JORDAN. One month ago, Inspector General Russell George gave the committee information that he informed the IRS on May 30th, 2012, that targeting of conservative political groups was taking place.

And, in fact, if we can put that up on the screen. This is from the TIGTA timeline he gave this committee.

And he says in that meeting, these terms were used, "Tea Party," "Patriots," "9/12," that there were three people in that committee, or in that meeting: Mr. Shulman, who is no longer with the IRS; Steve Miller, who has been fired; and you.

Now, Mr. Shulman testified a month ago in this committee that that was the first time he knew targeting was taking place. Was that the first time you knew about the targeting at the IRS?

Ms. TUCKER. That was the first time I was aware of the situation, yes.

Mr. JORDAN. Now, Mr. Miller has also—we've also been informed, the committee, through talking with Nan Marks, an employee at the IRS, that there was an internal investigation launched by Mr. Miller in March of 2012. Did you know about that internal investigation?

Ms. TUCKER. No, sir.

Mr. JORDAN. And the results of that were Mr. Miller knew about what was going on May 3rd of 2012. Did you know the results on May 3rd?

Ms. TUCKER. No, sir.

Mr. JORDAN. So the earliest you knew about it was the same time Mr. Shulman testified and what you're testifying to today, was May 30th of last year.

Ms. TUCKER. Yes, sir.

Mr. JORDAN. And you're familiar with the fact that Mr. Shulman testified in front of the Ways and Means Committee in March of last year, where he said this. First, Mr. Boustany asked him, "Can you give us assurances that the IRS is not targeting political groups?" Mr. Shulman said, "Yes, I can give you assurances. We pride ourselves on being a nonpolitical, nonpartisan organization." So just 2 months prior to learning that targeting was going on, he gave assurances.

Now, there's usually, when you give assurances, there's some basis for assurances. Were you part of the basis for assurances that Mr. Shulman gave the Ways and Means Committee in March of 2012?

Ms. TUCKER. No, sir.

Mr. JORDAN. You did not have any conversation with Mr. Shulman before he went and testified in front of the Ways and Means Committee?

Ms. TUCKER. No, sir.

Mr. JORDAN. In the meeting that took place on May 30th, the meeting that's highlighted there on the TIGTA timeline, when you learned that the targeting was taking place, what was the reaction in that meeting?

Was it, "Oh, sugar, we've got to do something here?" Was it, "We've got to correct the record?" What was the reaction when the three top people at the IRS learned that this was going on?

Ms. TUCKER. So, if I might, TIGTA, the Treasury Inspector General, comes in once a month to meet with—

Mr. JORDAN. Cut to the chase. What was the reaction? You find out there's targeting of political groups 6 months before a Presidential election. What was the reaction from the top three people at the IRS?

Ms. TUCKER. TIGTA reported the information that they were looking into the audit. And then, at that point in time, IRS waits for TIGTA to complete their investigation.

Mr. JORDAN. That's not what they told you. They told you "Tea Party," "Patriot," "9/12" were identifying terms used to put groups on a list who were never given the tax-exempt status they sought. In some cases, they'd been trying to get it for 3 years.

You learned that May—or, excuse me, May 30th, 2012. And your reaction was, oh, we'll just kind of let it keep going and see what TIGTA comes up with?

Ms. TUCKER. No, sir.

Mr. JORDAN. I mean, earlier in your testimony, you said to the chairman, you know, it would be helpful if this committee would share information with us at the IRS about the issue that's in front of the committee today.

Well, it would've been helpful if, once you got that information, you'd have shared it with this committee. We would've liked to have—and, in fact, we are the committee who asked for the audit in the first place. We would've liked to have known 6 months before an election, May 30th of last year, that targeting was going on.

Did you instruct Russell George to share this information with the House Ways and—Ways and Means Committee and with the House Oversight Committee?

Ms. TUCKER. Sir, my—

Mr. JORDAN. Well, that's a question. Did you tell Mr. George, "You know what, this is pretty important information. We just now learned today," according to your testimony, "that this is going on." Did you tell Mr. George, you know, "You might want to share that with the Oversight Committee," specifically since Mr. Issa is the one who requested the audit?

Ms. TUCKER. No, sir, that was not my responsibility. I have responsibility at Internal Revenue Service for—

Mr. JORDAN. Well, let me ask you this. What—

Ms. TUCKER. —operation.

Mr. JORDAN. But the point is, you were in the meeting. The other two guys are gone. Mr. Shulman's gone, Mr. Miller's been fired. You're the highest-ranking official at IRS in that meeting. You knew about it a year ago. Didn't you think it was incumbent upon you to set the record straight?

Your boss, Mr. Shulman, had just testified 2 months earlier and told Congress nothing was going on. He finds out 2 months later, in fact, it is going on. You're the highest-ranking official still at the IRS. You didn't think it was appropriate to come tell Congress what was taking place?

Ms. TUCKER. The TEGE organization does not report to me.

Mr. JORDAN. Why didn't you correct the record? Why didn't you just come—why didn't you come to Mr. Issa and say, "You know

what? What Mr. Shulman"—did you tell Mr. Shulman he should correct the record?

Ms. TUCKER. No, sir, I did not.

Mr. JORDAN. And—well, let me ask you this. Have you been disciplined by Mr. Werfel for not correcting the record?

Ms. TUCKER. No, sir. It's not in my purview.

Mr. JORDAN. Well, you're Deputy Commissioner. You're in the meeting. You learned about it that day, right?

Ms. TUCKER. Mr. George told us in his routine monthly meeting that they were doing an investigation of TEGE.

Mr. JORDAN. We understand that. All I'm asking is, there's got to be some reason why—you didn't feel any obligation, any reason that you should come forward and set the record straight? The Inspector General told the IRS what was going on. You didn't feel like he should tell us or you didn't feel incumbent—that it was incumbent upon you to tell the committee?

Ms. TUCKER. Sir, at the Internal Revenue Service, we have two Deputy Commissioners that have very clearly delineated—

Chairman ISSA. The gentleman's time has expired.

Ms. TUCKER. —roles and responsibilities.

Chairman ISSA. The gentlelady may finish.

Ms. TUCKER. At the Internal Revenue Service, we have two Deputy Commissioners with very clearly delineated responsibilities. I do not have responsibility—

Mr. JORDAN. Mr. Chairman?

Ms. TUCKER. —for the service and enforcement programs, as Mr. Miller would not have—

Mr. JORDAN. Well, then, Ms. Tucker, why were you in the meeting? If it has nothing to do with you, why did Mr. Russell George think it's important to tell us that you were in the meeting?

Ms. TUCKER. Mr. George and his deputies come into Internal Revenue Service every month and brief on all of their investigations, some of which are service and enforcement—

Chairman ISSA. Okay, well, the gentleman's time has expired. I'm sure we'll get back to this.

I would ask unanimous consent the man have 30 additional seconds.

Mr. CUMMINGS. I don't mind the 30 seconds, but I want her to be able to answer the question. I mean, he's like a machine gun, and she can't even get her answer out.

Chairman ISSA. Okay.

The gentleman may have 30 additional seconds. The gentlelady may then answer.

Mr. JORDAN. In that meeting, did you discuss with Mr.—so what you're saying is Mr. Miller had—that was his area of jurisdiction.

Ms. TUCKER. That is correct.

Mr. JORDAN. Did you tell Mr. Miller he should come forward and tell Congress what was going on?

Ms. TUCKER. No, sir. At this meeting—

Mr. JORDAN. Was that discussed?

Ms. TUCKER. If I could, please.

The meeting—TIGTA comes in once a month to Internal Revenue Service to brief the Commissioner and the two Deputies about their audits, their open audits. On any given meeting that they come in,

they could be talking—I mean, there are lots of oversight investigations that happen at Internal Revenue Service. Those meetings are typically TIGTA coming in and saying, we've opened an investigation on X program; we've opened an investigation on another program.

If it's an issue that is under my jurisdiction, like procurement, like the IRS budget, like our real estate portfolio, then I am the responsible party. What I'm trying to convey to you is I do not have oversight responsibility for the TEGE program.

Chairman ISSA. Thank you.

The gentlelady from Illinois, Ms. Duckworth, please.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

You know, this hearing is very troubling to me because this case really shows how things can go wrong. I want to support our small-business owners as much as possible. I want these set-asides to be successful. But I am absolutely appalled by the advantages that have been taken of the system.

Mr. Flohr, I know you cannot discuss Mr. Castillo's case because you would need his permission to discuss his particular case. That's why you could not answer the question earlier.

My understanding also is that the VA, or VBA specifically, is bound by legislation that says a certain condition has a certain disability rating. For example, a below-knee amputation is 40 percent. It just is, correct?

Mr. FLOHR. That is correct, ma'am.

Ms. DUCKWORTH. So it seems like there is an opportunity here for some legislative fixes to the system.

Mr. Chodos, is it true that any rating, even if it's just 5 percent, would qualify someone for a service-connected disability—service-connected disability-owned business?

Mr. CHODOS. So long as they qualify under the VA's rules for service-connected disability, that is adequate for the self-certification.

Ms. DUCKWORTH. Thank you.

Mr. Castillo, how are you? Thank you for being here today.

Mr. CASTILLO. I am not well, but you're welcome.

Ms. DUCKWORTH. All right.

So does your foot hurt, your left foot?

Mr. CASTILLO. Yes, ma'am.

Ms. DUCKWORTH. It hurts. Yeah, my feet hurt, too. In fact, the balls of my feet burn continuously, and I feel like there is a nail being hammered into my right heel right now. So I can understand pain and suffering and how service connection can actually cause long-term, unremitting, unyielding, unstoppable pain. So I'm sorry that twisting your ankle in high school has now come back to hurt you in such a painful way, if also opportune for you to gain the status for your business as you are trying to compete for contracts.

I also understand why—you know, something can take years to manifest themselves from when you hurt them. In fact, I have a dear, dear friend who sprayed Agent Orange out of his Huey in Vietnam who—it took 40 years, 40 years for the leukemia to actually manifest itself, and he died 6 months later. So I can see how military service, while at the time you seem very healthy, could 40 years later result in devastating injury.

Can you tell me if you hurt your left foot again during your football career subsequently to twisting it in high school?

Mr. CASTILLO. Ma'am, I don't understand the high school comment—

Chairman ISSA. Would the gentlelady—

Ms. DUCKWORTH. Prep school.

Chairman ISSA. Prep school.

Mr. CASTILLO. I apologize.

Chairman ISSA. Post-high school.

Mr. CASTILLO. I'm not—

Ms. DUCKWORTH. Post-high school. Okay, post-high school, prep school, before college, prep school.

Did you injure your left foot again after prep school?

Mr. CASTILLO. I'm not sure I understand the question, ma'am.

Ms. DUCKWORTH. You played football in college, correct?

Mr. CASTILLO. Yes, ma'am.

Ms. DUCKWORTH. As a quarterback?

Mr. CASTILLO. Yes, ma'am, I did.

Ms. DUCKWORTH. Did you hurt, did you injure that same foot again subsequently in the years since you twisted it in prep school?

Mr. CASTILLO. Not to my recollection, ma'am.

Ms. DUCKWORTH. Not to your recollection. Okay.

Why didn't you, Mr. Castillo, tell the VA that your doctor's note to them was inaccurate when you knew that it was?

Mr. CASTILLO. I don't feel that it's inaccurate, ma'am.

Ms. DUCKWORTH. Okay.

Mr. CASTILLO. Would you like me to address that?

Ms. DUCKWORTH. Yes. Go ahead.

Mr. CASTILLO. Yes, ma'am. So one of my doctors that submitted letters—so as part of the injury you have to establish that it's chronic and reoccurring. So when I returned home to San Diego, my doctor from San Diego had also—had said that he treated me for the foot injury that I suffered on Active Duty.

When I moved to Las Vegas a couple of years later, that doctor submitted that he continued to treat me for that left foot, broken foot injury.

Finally, when I moved to Virginia, I went to a doctor, and it continued to hurt. And he established that—so Dr. Sam Wilson, who, ironically, was also stationed at Monmouth—

Ms. DUCKWORTH. Okay. I have to cut you off because I'm running out—

Mr. CASTILLO. Okay.

Ms. DUCKWORTH. —of time. I'm sorry.

Mr. CASTILLO. Well, I just want to—so let me finish.

So in talking to Dr. Wilson, who himself was a disabled veteran and very familiar with Fort Monmouth in that his son had went there, as well, and played football, he actually was the one that talked to me about, hey, this may be something that is connected. And I believe I told him—

Ms. DUCKWORTH. So let me—

Mr. CASTILLO. —that I was first—

Ms. DUCKWORTH. Let me—I have to cut you off. I have to cut you off. This is not an argument. I'm talking. I'm up here.

Mr. CASTILLO. Yes, ma'am.

Ms. DUCKWORTH. Let me ask you this. Do you feel that the 30 percent rating that you have for the scars and the pain in your foot is accurate to the sacrifices that you've made for this Nation? That the VA's decision is accurate in your case?

Mr. CASTILLO. Yes, ma'am, I do.

Ms. DUCKWORTH. You know, my right arm was essentially blown off and reattached. I spent a year in limb salvage, with over a dozen surgeries over that time period. And, in fact, we thought we would lose my arm. And I'm still in danger of possibly losing my arm. I can't feel it. I can't feel my three fingers. My disability rating for that arm is 20 percent.

In your letter to a government official, I think it's the SBA, "Attention: Gina Mou," you said, "My family and I have made considerable sacrifices for our country. My service-connected disability status should serve as a testimony to that end. I can't play with my kids because I can't walk without pain. I take twice-daily pain medication so I can work a normal day's work. These are crosses"—these are crosses—"that I bear due to my service to our great country, and I would do it again to protect this great country."

I'm so glad that you would be willing to play football in prep school again to protect this great country. Shame on you, Mr. Castillo. Shame on you. You may not have broken any law; we're not sure yet. You did misrepresent to the SBA. But you certainly broke the trust of this great Nation. You broke the trust of veterans.

Iraq and Afghanistan veterans right now are waiting an average of 237 days for an initial disability rating. And it is because people like you, who are gaming the system, are adding to that backlog so that young men and women who are suffering from post-traumatic stress, who are missing limbs, cannot get the compensation and the help that they need.

And I'm sure you played through the pain of that foot all through college. Well, let me tell you something. I recovered with a young man, a Navy corpsman, who, while he was running into an ambush where his Marines were hurt, had his leg knocked off with an RPG. He put a tourniquet on himself and crawled forward. He is who played through the pain, Mr. Castillo. You did not. You took advantage of the system.

You described these statuses just today, that other companies were using these special statuses as competitive weapons against you. You, who never picked up a weapon in defense of this great Nation, very cynically took advantage of the system. You broke the faith with this Nation. You broke the faith with the men and women who lie in hospitals right now at Walter Reed in Bethesda, at Brooke Army Medical Center, in Landstuhl. You broke the faith with them.

And if this Nation stops funding veterans' health care and calls into questions why veterans deserve their benefit, it is because cases like you have poisoned the public's opinion on these programs.

I hope that you think twice about the example that you're setting for your children. I hope that you think twice about what you are doing to this Nation's veterans who are willing to die to protect this

Nation. Twisting your ankle in prep school is not defending or serving this Nation, Mr. Castillo.

Mr. Chairman, I'm sorry, I've gone—you've been very indulgent. I yield back.

Chairman ISSA. I thank the gentlelady. And the time was well-spent.

And I cannot add on to that, except I want to make sure the record is clear, since you are under oath, you said the word "broken" in your testimony just now, but my understanding from staff is that the X-ray taken at the time of your injury did not show a break.

Additionally, I want to make this clear for the record, and you can clear the record up if we don't understand it correctly. In your VA application and with a doctor's support, you claim that your twisted ankle came from football, as the gentlelady just said. However, in your transcribed interview before this committee, you said you slipped on a rock while orienteering.

For the record today, which one is the truth?

Mr. CASTILLO. So I believe that Dr. Wilson submitted that I was hurt playing football, that I told him that. And so, when meeting with the committee, I told them—and in preparation for meeting with them, I noticed that the date of injury noted on the—on my—from Patterson Hospital at Fort Monmouth was November 19th, which was after football season. So my response was that it could not have happened, that specific injury, during football.

The letter that was submitted stated that he had said that I had told him, and I think I told Mr. Davis that I would check. I did go back to Colonel Wilson and asked him, you know, what was his recollection of a conversation we'd had in 2005 that led him to write the letter in support of the VA application, which was to be submitted by doctors who treated me for my injury. And he'd said, to his best recollection, I told him I was hurt playing football.

So I believe that he submitted that in truth. And, in preparation, as I mentioned, the dates did not line up. So I did suffer a subsequent injury. And so I believe that what he had said is that, based on the injury I had suffered, it was probably a relapse or it caused an aggravation of the injury.

So I think that answered one of your questions. I think you had three in there. Did you have others? I apologize, I don't remember all three of them.

Chairman ISSA. VA, football, orienteering, and whether it was a break. You said in your testimony just a few minutes ago to the gentlelady that it was broken.

Mr. CASTILLO. Yes, and not—so, first and foremost, your service to this great country is well-known. And so, just to let you know, I didn't set my 30 percent disability or your 20 percent disability. And I think that—

Ms. DUCKWORTH. But you're taking advantage of it. And you went after that disability rating for the benefit of your company because, as you said, other companies were using these statuses as a competitive weapon against you. You said that today.

Mr. CASTILLO. Ma'am, when I said that, I meant that they were using the protest process of the procurements as competitive weapons, not my disability. So I apologize if I at all stated that they

were using my disability as a competitive weapon. I meant that they were protesting awards as competitive weapons against our company. So thank you for allowing me to clear that up.

And, again, I don't set the ratings. And in it was in keeping and speaking with Dr. Wilson, Colonel Wilson, retired, who was at Monmouth Hospital on Fort Monmouth, that he had said that I may be able to qualify. And—

Ms. DUCKWORTH. You made the decision to apply for a disability rating for a twisted ankle from either football or orienteering. You can't—you haven't even answered the chairman's question. You were there. Did you twist your ankle or did you break—or did you twist it playing football? Do you not remember? Was it orienteering or was it football? Which was it?

Mr. CASTILLO. Well, to answer your question, it was not a sprained ankle. It was a broken foot. And I believe that the X-ray technician wrote that there was a much—I don't—I'm not a doctor—or that led to it. But it was—in essence, they X-rayed it, and they showed a sufficient change in the malformation. I forget exactly.

So, in speaking with the doctor, I said, can you really just simplify that for me? He says, "You broke your foot." That's what he told me.

Chairman ISSA. I thank the gentlelady.

And I would trust that the VA can take note of testimony here today and reopen the case to at least get to an accurate record and then an accurate determination.

We now go to a medical doctor from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

And as a former VA physician and someone who had the privilege of treating many of our great veterans, both service-connected and not, I do think that one thing that is very important is a good history.

When did your injury occur?

Mr. CASTILLO. Around fall of—the initial injury, fall 1984. And the second injury, November 19th, 1984.

Mr. DESJARLAIS. Okay. So in 1984, how did the first injury occur? What were you doing, and what was your title?

Mr. CASTILLO. I believe I was an E-2 enlisted soldier, sir, and—

Mr. DESJARLAIS. Okay, in prep school. And how did the injury happen?

Mr. CASTILLO. I believe the initial injury happened playing football.

Mr. DESJARLAIS. Okay. So you were playing football, you went and got an X-ray, and that's when they told you it was broken?

Mr. CASTILLO. No, sir, the initial injury was not X-rayed, and that's not when they named it broken foot. I was treated by trainers—

Mr. DESJARLAIS. Okay. And when was the second injury?

Mr. CASTILLO. November 19th, 1984.

Mr. DESJARLAIS. How many months apart was that?

Mr. CASTILLO. Probably not a month.

Mr. DESJARLAIS. A month apart?

Mr. CASTILLO. Thereabouts.

Mr. DESJARLAIS. Okay, so you had a second injury, and you were playing football at that time?

Mr. CASTILLO. No, sir, I was hurt in the field during an orienteering exercise.

Mr. DESJARLAIS. Okay. And you got an X-ray at that time?

Mr. CASTILLO. Yes, sir.

Mr. DESJARLAIS. Okay. And that's when they thought it was broken?

Mr. CASTILLO. Yes, sir.

Mr. DESJARLAIS. Okay. And so it healed in 6 to 8 weeks. You were put in a cast, you were on crutches.

Mr. CASTILLO. On crutches and, well, orthotics or wrapped up or whatever—

Mr. DESJARLAIS. Sure.

Mr. CASTILLO. I don't know—

Mr. DESJARLAIS. And by 8 weeks you were walking on it again. And then when did you play football again, the next year?

Mr. CASTILLO. Yes, sir.

Mr. DESJARLAIS. And how many years did you play football after that?

Mr. CASTILLO. Four years after—

Mr. DESJARLAIS. Four years of football. What about your athletic career after that? Did you play golf, any other sports, tennis?

Mr. CASTILLO. I play golf very poorly—

Mr. DESJARLAIS. Okay.

Mr. CASTILLO. —but I played some softball.

Mr. DESJARLAIS. Okay, softball. Do you still play golf?

Mr. CASTILLO. No, sir.

Mr. DESJARLAIS. Okay. When's the last time you participated in sports?

Mr. CASTILLO. A couple weeks ago, I went out with some buddies and played some—

Mr. DESJARLAIS. Okay, so you can still get around on it okay, despite having a 30 percent disability service connect for this injury.

Mr. CASTILLO. Yes, sir, I have—since you're a doctor, you probably—I have a fused, I think, navicular area that was fused.

Mr. DESJARLAIS. And so, 27 years later, you decided that this must've been from the original injury? That's what the doctors decided?

Mr. CASTILLO. No, sir. After suffering for 20-plus years, I went and saw a doctor, and he—

Mr. DESJARLAIS. Okay.

Mr. CASTILLO. —and he established the broken foot and did the fusion—the three-fusion exercises—fusion surgery. Excuse me.

Mr. DESJARLAIS. I'm sure that doesn't make you feel much better, Ms. Duckworth, but thank you for updating us on the history.

Ms. TUCKER, at the beginning of the hearing this morning, Gregory Roseman invoked his Fifth Amendment right against incrimination, did not testify. As the Deputy Commissioner of the IRS, is it your expectation that an IRS employee will appear before the committee to testify about official action taken within the scopes of his duties at the IRS?

Ms. TUCKER. So we expect all IRS employees to cooperate with Members of Congress.

Mr. DEJARLAIS. But he didn't.

Ms. TUCKER. He did not. And—

Mr. DEJARLAIS. Ms. Lerner didn't.

Ms. TUCKER. Each of these individuals, as Mr. Cummings said, invoked their constitutional right.

Mr. DEJARLAIS. Okay. And this is an agency you've been with 29 years, and you stated in your testimony you're very proud of your service there and very proud of this agency, despite, you know, the multiple black eyes they have right now.

Has the IRS taken any disciplinary action against Mr. Roseman as a result of this committee's investigation or TIGTA's investigation?

Ms. TUCKER. So when I became aware from the Treasury inspector general of investigations in mid-May of hard evidence that they had found regarding inappropriate texting by Mr. Roseman, I directed the procurement organization, his superiors, to reassign him from a management position.

Mr. DEJARLAIS. But you agree that he would be uniquely qualified to testify about what we are wanting today?

Ms. TUCKER. Yes, sir.

Mr. DEJARLAIS. Okay. So the fact that he invoked his Fifth Amendment, that's his right, but the fact that Lois Lerner did, too, and the American people wanting answers, what's going on with the IRS? We've got targeting of conservatives, we've got excessive spending, we've got situations like this. And I understand you want to be proud of who you work for, and you should be, but how are we going to get justice? Do you think that the IRS needs to bring people to justice? You were in on these meetings. Mr. Jordan asked you why you were in on those meetings, and he asked you what was the initial reaction. And nobody's given us a reaction, nobody was shocked, but we—you agree that targeting conservative groups was wrong?

Ms. TUCKER. So what I was told—

Mr. DEJARLAIS. Do you agree that targeting conservative groups was wrong? That's a yes or no. Do you agree it was wrong? Can someone in the IRS admit that this was wrong?

Ms. TUCKER. I think the information that was released this week by our Acting Commissioner shows that BOLO lists were inappropriately used across multiple, multiple criteria. So, yes, that criteria was incorrect.

Mr. DEJARLAIS. So the IRS is screwed up. Somebody needs to be held accountable.

Who—who is in charge of appointing the Commissioner of the IRS?

Ms. TUCKER. That's a Presidential appointment.

Mr. DEJARLAIS. Okay. All right. Well, somebody needs to be held responsible; do you agree?

Ms. TUCKER. All of us at IRS have to be responsible for the administration of our agency.

Mr. DEJARLAIS. Okay. The American people are going to be very relieved when they get this news of who might be held accountable. Do you have any idea as to who might be held accountable? Do you think you should be?

Ms. TUCKER. I think the investigation that's under way, that's exactly what this is intended to do. As our Acting Commissioner Danny Werfel has stated numerous times, we all want to get to the truth.

Mr. DEJARLAIS. Well, the American people want us to get to the truth, so thank you for being here today and helping us on—in that process.

I yield back, Mr. Chairman

Chairman ISSA. Ms. Tucker, the gentleman asked you did you think it was wrong to target conservative groups, and you said it was incorrect. Could you answer the gentleman's question, was it wrong?

Ms. TUCKER. So, Chairman Issa, I feel—I feel compelled that I need to make sure that everyone understands the meeting that I was in when Russell George and his team came in to share just their routine, here are the audits we have under way, Mr. George at that time basically said, we are initiating an audit—

Chairman ISSA. No, no. That's not the question. And I apologize. The doctor asked you a fairly straightforward question, which is, as one of the highest career professionals in the IRS, you are now aware that these BOLOs were used to target and delay for up to 3 years a legitimate answer to people's applications based on their ideology. Do you think that was wrong?

Ms. TUCKER. No, sir. What I'm trying to tell you is that's not what I was told in that meeting. In—

Chairman ISSA. I'm not asking about the meeting. I'm asking about what is now known.

Ms. TUCKER. So when the—when TIGTA issued their final report, what, in April, early May of this year, yes, I think all of us at IRS that saw the report are troubled; thus the investigation to get to the bottom of exactly what transpired.

Chairman ISSA. Ms. Tucker, I'm just asking about right or wrong, and that's what the doctor was asking about, not was it incorrect. This is—this is virtually a simple question for almost every citizen to answer. Was it right or wrong to do what you now know from the IG's report? Was it right or wrong?

Ms. TUCKER. Sir, I—here's—here's what I know based on what was told to—

Chairman ISSA. Okay. I'm not going to get an answer, and I don't have any time.

I think, Mr. Davis, you are next up.

Mr. DAVIS. I think I am, Mr. Chairman, and I thank you very much. And I want to thank all of the witnesses. But I also want to thank you and the ranking member for holding this hearing. I think we've learned a great deal, or we've had, for some of us, reinforcement of thinking and thoughts.

Especially do I want to relate myself to the question, and of the ranking member and that of Delegate Norton, whose questioning revealed that so often in communities that are designated to benefit from program activity, that there are ways to manipulate, to scheme and get around to the point where the designation means absolutely nothing to the community or neighborhood that is supposed to benefit. And for those who have helped create HUBZones,

been advocates for them, they look for the benefit that's to come. Didn't see much benefit from this particular business transaction.

So, Mr. Chodos, let me ask you about the finding in the SBA decertification letter that Mr. Castillo and his company tried to pass off employees as contractors to skirt the HUBZone rules and collect or earn millions of dollars. On May 23rd, 2013, SBA sent a decertification letter to Mr. Castillo, and in that letter the director of the HUBZone program found that Mr. Castillo erroneously characterized individuals as contractors rather than employees in order to maintain the 35 percent eligibility requirement for the HUBZone program.

Mr. Chodos, how would you classify someone as a contractor rather than an employee help Mr. Castillo's application?

Mr. CHODOS. If I understand your question, Representative Davis, it's when the facts came to our attention that the people who were running the company essentially or in managerial charge of the company were listed as independent contractors rather than as employees, we look to the substance rather than the form of whether or not they are actually employees of the company, and we were able to determine that under a totality test, that, in fact, they were, for all meaningful purposes, employees of the company, and thus the test was not met.

Mr. DAVIS. Well, let me read from the SBA certification letter, if I might, and it says this: SCI is telling the government two different stories. To the Internal Revenue Service, the individual is a valued and key member of Signet's management team and its proposed program manager, and to the SBA she is merely an independent contractor. In SBA's view, a firm's management team and its program manager are not roles that are normally subcontracted out to third parties.

Ms. Tucker, let me ask you, why is it important to procurement officials that they know who the proposed program manager is for a particular contract?

Ms. TUCKER. So from—from the folks in our procurement organization, from—from what they tell me, as we are interacting on contracts like the one that we're talking about today, the project manager is indispensable in communicating with the Internal Revenue Service business owners to make sure whatever service or product we are contracting for is—is being delivered appropriately. So that—that is very important.

Mr. DAVIS. Mr. Castillo, let me—and I agree with you that you didn't make the rules, you didn't write the regulations, you didn't pass the bills, so you did not create the opportunities that existed for you to try and do business under these arrangements. But let me ask, how do you explain telling the Internal Revenue Service that someone would be the key program manager for the contract, and then telling the Small Business Administration that that person is an independent contractor?

Mr. CASTILLO. So the person was—is an independent contractor in that she works in support of several companies. I think she supported our company and SAIC at that time and was a 1099 employee.

A program manager, while I understand that it's important, it doesn't necessarily make that person an employee. And I will tell

you, being in the consulting field, that a program manager can be contracted out and is often contracted out. As we serve as a contractor on the IBM contract that Ms. Tucker—

Mr. DAVIS. But you knew that. But you knew that before it was brought to your attention by either the SBA or the Internal Revenue Service. I'm saying you knew that as a result of your knowledge and experience and the work that you've done, but yet you described it two different ways.

Mr. CASTILLO. Well, I think they're both consistent. I think that they're an important member of the team, and we bid them as a program manager on the job, as we bid programmer on other jobs through other companies.

And the distinction we made with the other ones was that one was a—the other person actually owned a company, supported five other companies, and the other one didn't even work for us, she supported us during her maternity leave. She did it as a favor to me during her maternity leave.

Mr. DAVIS. My time has expired, so thank you very much. But nevertheless, you described two different ways when you were dealing with the procurement opportunity.

Thank you, Mr. Chairman. I yield back.

Mr. BENTIVOLIO. [Presiding.] Thank you.

The chair now recognizes the gentleman from South Carolina Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman. I also want to thank my friend from North Carolina for yielding me his time.

Mr. Chairman, I want to thank my colleague from Illinois for her service to our country. Her moral standing to discuss service and sacrifice is unimpeachable. So I want to publicly thank you again for your service to our country.

Ms. Tucker, more people have invoked their Fifth Amendment privilege against self-incrimination in this job than they did my former job, and I was a prosecutor, so that's saying a lot. And two of them are current government employees. And just so there's no misunderstanding, they're invoking their Fifth Amendment privilege in connection with their official duties. We're not discussing bank robberies or narcotics trafficking; we're discussing their official duties, and they feel the need to invoke their Fifth Amendment privilege.

So I want to ask you to do something for me. Okay? Have you seen the texts from Mr. Roseman?

Ms. TUCKER. Yesterday when the committee released the report—

Mr. GOWDY. Okay.

Ms. TUCKER. —yes, sir, I have seen the text.

Mr. GOWDY. So you have seen these despicable homophobic slurs.

Ms. TUCKER. Yes, sir. I saw the information in the committee report.

Mr. GOWDY. Well, here's what I'm going to ask you to do for me and, frankly, for our fellow citizens: Before the close of business today, if you can, issue a statement on behalf of the IRS as to why he's still employed and still drawing a paycheck. If you've seen the texts that I have seen, I would like an explanation as to how you can keep your job if you say things he said in your official capacity.

Can you do that? Can you explain to us how you can keep your job and your paycheck despite these homophobic slurs?

Ms. TUCKER. Sir, if I might, as I said in my opening statement, based on the information in the committee report yesterday, I am—I am sickened—

Mr. GOWDY. All right.

Ms. TUCKER. —not only as—

Mr. GOWDY. I appreciate that, Ms. Tucker.

Ms. TUCKER. —not only as an IRS official—

Mr. GOWDY. I—

Ms. TUCKER. —but also as a citizen.

Mr. GOWDY. I appreciate that. My question was actually a little more specific. Can you issue a statement by 5 o'clock today as to how someone who used this language in their official capacity as a government employee is still employed and drawing a paycheck? Can you explain that to us by close of business today?

Ms. TUCKER. Sir, if I might, we are having discussions at Internal Revenue Service—

Mr. GOWDY. And how long do you anticipate those discussions are going to last? Because I just read the texts this morning, and I have already reached my conclusion. So how long do you think it's going to take y'all?

Ms. TUCKER. So we are having discussions with our general counsel.

Mr. GOWDY. How about close of business tomorrow?

Ms. TUCKER. So we're going to do our very best to follow due process, but, candidly, to also make sure we do this appropriately, because I think the committee's aware of the Federal personnel rules, and we want—

Mr. GOWDY. If this doesn't violate them, Ms. Tucker, then we need to change them.

Ms. TUCKER. Yes. So we are doing everything we can to make sure—

Mr. GOWDY. All right. Well, rule—

Ms. TUCKER. —that we follow the proper procedures.

Mr. GOWDY. I will be anxiously awaiting an explanation as to how you can say what this person said in your official capacity and keep your job and keep your paycheck. I will anxiously await that explanation.

Ms. TUCKER. Yes.

Mr. GOWDY. Mr. Castillo.

Mr. CASTILLO. Yes, sir.

Mr. GOWDY. Why did Mr. Roseman invoke his Fifth Amendment privilege?

Mr. CASTILLO. I'm—I have no idea, sir.

Mr. GOWDY. You don't know? You don't know what conduct he could be worried about?

Mr. CASTILLO. Well, I think you spoke about one of them, but, no, sir, I don't know why he did, and I wish he was here to speak about some of these things.

Mr. GOWDY. Well, we do, too, Mr. Castillo, but he's not, so I'll direct my questions to you.

Mr. CASTILLO. Okay.

Mr. GOWDY. Did you discuss his invoking his Fifth Amendment privilege with him before today?

Mr. CASTILLO. No, sir, I did not.

Mr. GOWDY. When's the last time you talked to him?

Mr. CASTILLO. Before February 20th.

Mr. GOWDY. Do you know what criminal exposure he's concerned about?

Mr. CASTILLO. No, sir, I don't.

Mr. CASTILLO. You don't have any idea?

Mr. CASTILLO. No, sir.

Mr. GOWDY. Did he ever solicit gifts from you?

Mr. CASTILLO. No, sir, he did not.

Mr. GOWDY. Did you ever offer gifts to him?

Mr. CASTILLO. I think it's noted in the—

Mr. GOWDY. Well, humor me and answer it again.

Mr. CASTILLO. So we went to a ballgame around the 2005 time frame when I worked at Government Acquisitions that he paid for. I gave him a receipt. And—

Mr. GOWDY. Has he discussed employment with you post-IRS?

Mr. CASTILLO. No, sir, he has not.

Mr. GOWDY. Will you describe the nature of your relationship with Mr. Roseman to us?

Mr. CASTILLO. I would say that it's centered on my doing business with the IRS and his—for 10 years or so.

Mr. GOWDY. Did you discuss contracts that you were competing for or interested in with Mr. Roseman prior to the issuing of those contracts or the awarding of those contracts?

Mr. CASTILLO. Not to my—well, I'm not sure I understand the question, sir. Did we discuss contracts beforehand?

Mr. GOWDY. I'm trying to figure out whether or not you violated any of the bidding procedures, whether or not he gave you an unfair advantage if you were seeking work that other people were also seeking.

Mr. CASTILLO. No, sir. I'm not aware that I have an unfair advantage in any of them.

Mr. GOWDY. How about any advantage, unfair or fair? Did his relationship with you give you an advantage?

Mr. CASTILLO. No, sir.

Mr. GOWDY. You've never discussed future employment with him?

Mr. CASTILLO. No, sir.

Mr. GOWDY. Well, this is my last question, because my time has run out. Mr. Castillo, have you read the texts from Mr. Roseman?

Mr. CASTILLO. I have—I have read them. Sir, I provided them to the committee.

Mr. GOWDY. All right. And you still say he's your friend?

Mr. CASTILLO. So to be clear—

Mr. GOWDY. No. I want you to be clear, because—because I just read them, and I—and I want you to be clear. You've read them.

Mr. CASTILLO. I have—

Mr. GOWDY. You know what's in them, the homophobic slurs in his official capacity. Y'all still friends?

Mr. CASTILLO. I'm deeply offended. As you're aware, those were targeted toward—towards me—

Mr. GOWDY. Yeah. I—

Mr. CASTILLO. —towards me.

Mr. GOWDY. Yeah, I am. That's why I'm asking you.

Mr. CASTILLO. So I am offended. If you can appreciate that he's the customer, and it's not my job to go around correcting what the customer does or doesn't say. And I—and so—

Mr. GOWDY. Do you think it's appropriate for a government employee to say those things about—about someone—

Mr. CASTILLO. No, sir.

Mr. GOWDY. —in their official capacity?

Mr. CASTILLO. No, sir, it's not.

Mr. GOWDY. How long would it take you to get rid of an employee that said that?

Mr. CASTILLO. Well, I think it's well noted of the—some of the employees that we've terminated, it would not take me—

Mr. GOWDY. Yeah, for a lot less.

Mr. CASTILLO. It would not take me until 5 o'clock time—

Mr. GOWDY. You did it a lot quicker for a lot less.

Mr. CASTILLO. Yes, sir.

Ms. TUCKER. Mr. Gowdy, if—if I might, my folks that are here in the room believe that the specific text message that you're referring to we actually have not seen yet at IRS.

Mr. GOWDY. Would you like me to walk them down to you?

Ms. TUCKER. I would—I would like to at some point receive those. But let me just be clear, when I said that I was deeply disturbed, that was based even on the mess—the text messages that were already in the report.

Mr. GOWDY. Well, here. Let me make sure that you get them before you leave—

Ms. TUCKER. No. I—

Mr. GOWDY. —because if you had thought you were deeply disturbed, you may reach a whole 'nother level of disturbia.

Ms. TUCKER. Thank you, sir. I appreciate that.

Mr. BENTIVOLIO. Thank you.

The chair now recognizes the gentlewoman from Illinois Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair.

This committee serves two purposes, oversight and reform, and I'd like to get to what reform your agencies are looking at. We have seen how a contractor has been able to game the HUBZone system to get an advantage on his competitors for millions in government contracts, and I want to know how we're going to prevent this from happening in the future.

Mr. Chodos, is the SBA taking any remedial steps in light of the findings of this case?

Mr. CHODOS. Thank you, Representative Kelly.

Let me say that the agency did take an immediate step when it found out that there was a problem back in December and January at the end of last year and the beginning of this year, which was to decertify this firm after duly looking into the facts and getting the correct facts.

So in terms of moving forward, the agency is always looking for opportunities to make the program more effective and to identify ways to work closely with our colleagues at VA and at GSA to align

and coordinate our different rules about procurement so that they all work in the same direction.

So we have proposed rules under the JOBS Act that are in process now as we speak that seek to make issues involving use of the HUB—HUBZone program clearer, more straightforward, and which will improve our opportunities for straightforward oversight.

Ms. KELLY. Mr. Davis read the decertification letter already, but is SBA considering asking applicants to provide information identifying not only employees, but all other individuals who work on behalf of the company, such as contractors?

Mr. CHODOS. Yes. And I believe that change has already been instituted.

Ms. KELLY. Great.

As committee staff interviewed IRS procurement officials, they also identified that those personnel needed additional training about procurement ethics generally, as well as specific training about the types of relationships that IRS procurement officials are prohibited—prohibited, excuse me, from having with contractors.

Ms. TUCKER, can you please describe the steps the IRS has taken to improve its procurement ethics training?

Ms. TUCKER. Yes, ma'am. We have a whole host of actions under way, including an annual ethics training that will be provided to all of our procurement employees in addition to what they already have. It will be delivered by our chief counsel organization. And, in fact, we're doing an all-employee meeting today with our workforce to reemphasize that the positions we hold, ethics is of the utmost importance. And so I can assure you and give you personal assurance that our training programs will be significantly enhanced in the days and weeks ahead.

Ms. KELLY. Is there any other remedial action that you're taking that you would like to share?

Ms. TUCKER. You know, the—the—the findings of—regarding the, what I believe, totally inappropriate relationship between one of our procurement employees and Mr. Castillo, while I—I believe at my core that the men and women of our procurement organization are operating with the highest ethics and integrity every day, I know that one bad actor can—can cast disparity on our organization, and so as a result, we're doing a top-to-bottom review of our entire procurement organization, just reassuring ourselves that we're following proper policy and procedures.

I've also asked the Treasury Department procurement executive—they do routine reviews of IRS—I've asked them to come in. I've also launched an independent review.

And in addition, I think, you know, that the focus that we're going to be putting on, you know, more routine briefing—we do a quarterly performance review of the procurement organization—I think all of our existing internal controls we just need to double down on to reassure ourselves that this—this type of behavior is not prevalent. And I have no reason to believe, ma'am, that it exists beyond what—the unfortunate situation with Mr. Roseman.

Ms. KELLY. All right. Thank you.

How about, Mr. Sisk, anything to add?

Mr. SISK. We are currently continuing our review of this particular case to make sure all proper rules and regulations were fol-

lowed. In addition, we're taking a look at our internal management controls to make—see if they need to be strengthened in any particular areas in light of some of the questions that came out of the committee.

Ms. KELLY. Okay. Mr. Flohr?

Mr. FLOHR. Thank you, ma'am.

In my particular area of expertise is veterans benefits, and so I don't have a lot of information about the SP—Veteran-Owned Small Businesses, but I would be glad to take any questions for the record and provide them to you.

Ms. KELLY. Okay. Thank you.

Ms. KELLY. Thank you. And I hope we continue looking at this issue and make improvements to gain the public's trust back. Thank you, Mr. Chair.

Chairman ISSA. [Presiding.] Thank you.

Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Ms. Tucker, some of the testimony you've given recently is very troubling, because it's in direct conflict with testimony we've heard in this very room from Mr. George. And so with that, to make sure that we have a continuity, I'm going to yield some of my time back to Mr. Jordan at this particular point. So I yield to the gentleman from Ohio.

Mr. JORDAN. I thank the gentleman.

Ms. Tucker, so you're number two at the Internal Revenue Service. You learn on May 30th from the inspector general that political targeting of conservative groups is taking place. You know the number one at the IRS 2 months prior to that testified in front of Congress to just the opposite. And you told me in my first round of questioning that because it didn't fall under your jurisdiction, you didn't feel obligated to set the record straight?

Ms. TUCKER. Sir—

Mr. JORDAN. I mean, what—how does that encourage whistleblowers to come forward when they know something's been done wrong, if you're the number two career professional at IRS, and you don't come forward and set the record straight?

Ms. TUCKER. Sir, if I might just—and maybe I'm not making myself clear. The meeting that I was in, what Mr. George told, to the best of my recollection, in the meeting was that his team was opening an audit on the TEGE organization, and that part of that audit is that they were looking at the—the BOLO list.

Until—to the best of my recollection, sir, until Mr. George issued the report in April where he revealed that inappropriate targeting had appeared to have taken place based on the BOLO list, sir, that was—that was the first time that I actually had seen the results of Mr. George's investigation.

Mr. JORDAN. Well, if—if I could, and if the gentleman would cut me off when you need to, Congressman—according—this is from the hearing. The chairman asked inspector general May 30th, IG function has briefed the IRS Commissioner Doug Shulman, Deputy Commissioners Miller and Tucker specifically the criteria targeting Tea Party Patriots, and 9/12 and other words were used to—in reviewing applications for tax—you briefed, and that was your notes. Mr. George response: Yes, that's correct.

So it was very specific. You were briefed on it that day, and yet you didn't feel compelled to do anything.

Ms. TUCKER. Mr. George was briefing on the start, to my recollection, of their audit. And obviously, as he talked about that they were looking at these words being used, yes—

Mr. MEADOWS. Will the gentleman yield?

Ms. TUCKER. —that seems to be inappropriate.

Mr. JORDAN. Be happy to yield back.

Mr. MEADOWS. I thank the gentleman.

Ms. Tucker, that's in direct conflict with what Mr. George said sitting on this end right here. What he said, that May 30th meeting he went over preliminary results of the investigation that they've had and let you, Mr. Shulman and Mr. Miller know in that meeting. It was not the start of an audit. It was the preliminary results where targeting actually happened. You don't recall that?

Ms. TUCKER. Sir, I—to go back—

Mr. MEADOWS. Because I'm finding that a lot of members of the IRS have very great detail on recalling things at certain times, and at other they lack the memory. So you don't recall that he said that?

Ms. TUCKER. Sir, I recall the meeting, the monthly meetings that we have with Mr. George and his team—

Mr. MEADOWS. And there was nothing unusual about this May 30th meeting? There was nothing unusual. This—it was a normal routine update that he saw fit to go 4 days later to chief counsel and let them know about it? That was Mr.—Mr. George's testimony. Your testimony and his are not matching up.

Ms. TUCKER. Sir, I—I'm—I do not recollect. And I have to keep going back to this. In our monthly meetings with Mr. George and his team, they cover a whole host of IRS audits—

Mr. MEADOWS. So there's nothing unusual about this particular time? That May 30th meeting, there was nothing unusual about that? This was just a normal routine update that you get every month?

Ms. TUCKER. Sir, obviously when Mr. George conveyed to the Internal Revenue Service that in the course of their examination, or their audit, that they were looking into—

Mr. MEADOWS. It wasn't—it was preliminary results, Ms. Tucker, not looking into. It was preliminary results where targeting was identified.

Ms. TUCKER. And, sir, based on the testimony that I've seen from Mr. Miller, following that discussion, to the best of my recollection, is when he took action to ask for an independent review.

Mr. MEADOWS. No. That happened actually before. So let me—because we—you earlier on—if the chair will indulge me for just a second. You earlier on said that this committee needs to continue to give you information, but yet you're the one that's paid for managing this whole organization. You're the one that gets paid for it. We have oversight, and yet what we're finding is we're having to discover and manage the process of which you're getting paid for. And—and here we are, you've said eight times, let me be clear. So let me be clear that the internal investigation at the IRS happened actually before May 30th. It was concluded the first part of May. It was started the day after Mr. Shulman gave testimony to the

Ways and Means Committee saying that there was—he could give assurances that there was no targeting, and y’all started an internal investigation the very next day. So your timelines don’t match up, Ms. Tucker.

So how do you—how do we respond to the American people, because all they want, the ranking member has said it, they want truth so then yet again they can trust. So how do we respond to that?

Ms. TUCKER. Sir—

Chairman ISSA. The gentlelady may answer. The time is expired.

Mr. MEADOWS. I thank the gentleman. I yield back.

Ms. TUCKER. Sir, I am—I am trying to share with you the truth from what I know and what programs I have responsibility for. IRS is an organization of 100,000 people and multiple programs. I am the Deputy Commissioner for Operations Support. I do not have responsibility, sir, for oversight and administration of the service and enforcement program.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Virginia Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I might say to my colleagues, Mr. Meadows, Mr. Jordan, that if we’re going to cite the testimony of the inspector general, I would cite the question-and-answer period between the inspector general and myself in which I directly asked the inspector general whether, in fact, progressive groups could also have been targeted in the unidentified 202 organizations that were looked at. And his answer, in light of recent facts, is at best elusive. And I certainly think that if we want to cite the inspector general, we ought to have him come back here under oath, as he was that day we had him, and allow him to clarify his answers, because they certainly look strange to some of ours.

Chairman ISSA. Would the gentleman yield?

Mr. CONNOLLY. If the clock will stop.

Chairman ISSA. Just—just if you could answer, what are you asking to have the IG come back and answer?

Mr. CONNOLLY. I—Mr. Chairman, I’d—I’d ask the clock to stop.

Chairman ISSA. We’ll hold the clock, but I just want to know—

Mr. CONNOLLY. Mr. Chairman—

Chairman ISSA. —if you’re making a request what the request is.

Mr. CONNOLLY. Yeah. The request is that there is now serious confusion about the answer the inspector general gave to my direct questioning whether he knew that, in fact, progressive groups, not just conservative groups, were also in the filtering of the BOLO. Did he know that when he answered my question? Because he inferred from his answer that he did not, that the—that they—that those were all unidentified. We now know that’s not true. Now, did he know that, and did he know it when he testified under oath before this committee—

Chairman ISSA. Okay. We’ll—

Mr. CONNOLLY. —because—

Chairman ISSA. We’ll—we’ll look at how we can do that.

Mr. CONNOLLY. Thank you.

Mr. JORDAN. Will the gentleman yield?

Mr. CONNOLLY. I'm afraid my time is running out, so I'm going to proceed with questioning, but I thank—thank my colleagues.

During the course of the committee's investigation, it's become clear that Strong Castle provided inaccurate information to SBA on multiple occasions. Mr. Castillo, according to the SBA's letter decertifying Strong Castle, the company provided inaccurate payroll records for two employees. SBA's decision stated that Strong Castle, "admitted that the records provided were false and inaccurate." Is that correct?

Mr. CASTILLO. They were inaccurate, yes.

Mr. CONNOLLY. They were inaccurate?

Mr. CASTILLO. Yes, sir.

Mr. CONNOLLY. And the SBA decision goes on to explain, SCI confirmed the one instance identified by SBA and identified another. The corrections were only made after being confronted with the conflicting evidence presented by SBA. Strong Castle's former C—COO, Michelle Castillo—I guess that's your wife—

Mr. CASTILLO. Yes, sir.

Mr. CONNOLLY. —said that when she discovered errors in the payroll records, she did not check to see whether there were additional errors in other months. When she was asked, how do you know there weren't other errors for the previous 6 months, she replied, I don't.

Is that the kind of recordkeeping you kept at your company, Mr. Castillo?

Mr. CASTILLO. Sir, I don't know of her testimony, but rest assured, I am aware of the two that you're talking about where a student worked 6 hours in 1 day and 8 hours in the other and transcribed those in that week, and that student employee had written that he had worked 8 hours on 1 day when he meant that he worked the other day. So I'm aware of those.

And—and so we have put steps in place, including the person that you'd mentioned, my wife, resigning from the company. I've taken over that. We've put steps in place to ensure that we have tighter recordkeeping around that—

Mr. CONNOLLY. Well—

Mr. CASTILLO. —including assigning people on a day-to-day basis that log in hours and report and supervise hours.

Mr. CONNOLLY. Thank you.

Mr. Chodos, how can SBA base certification decisions on payroll records from companies when they can't verify actual employment, by their own admission?

Mr. CHODOS. Companies have a duty to provide accurate information to the SBA because, of course, the SBA needs accurate information on an ongoing basis in order to originally certify and then to decide if a company is still in compliance.

Mr. CONNOLLY. So is there sort of an honor system? We rely on them to be—to verify and to tell the truth?

Mr. CHODOS. Well, we always expect folks to act in an honorable way, but the regulations require that they provide accurate information on an ongoing basis. So this is a regulatory requirement, not just a trust system.

Mr. CONNOLLY. In this case the certification provided previously was the difference between, well, qualifying for a HUBZone, but also the 35 percent residency requirement. Is that right?

Mr. CHODOS. I'm sorry, Representative, I just didn't understand the question.

Mr. CONNOLLY. The information provided by former employee Michelle Castillo meant that Strong Castle made the difference with the 35 percent residency requirement; is that correct?

Mr. CHODOS. Yes. The—well—

Mr. CONNOLLY. So this wasn't just an error; this was sort of dispositive.

Mr. CHODOS. Well, this went to two issues. It went to whether—the status of employees and whether or not employees were actually spending their time at the principal location, as represented.

Mr. CONNOLLY. Is SBA looking into the issue in this case of fraud?

Mr. CHODOS. The SBA is continuing to receive information, and has had a number of communications with the committee, and welcomes all information on this topic. And also, as we have indicated to the committee, since at least March, the SBA has been in regular communication with our inspector general and has shared all of the information available to us with our IG. So it's an ongoing process of evaluating information as it becomes available.

Mr. CONNOLLY. Thank you. My time has expired.

Chairman ISSA. Thank the gentleman.

We now recognize the gentleman from Michigan for his round of questioning.

Mr. BENTIVOLIO. Thank you, Mr. Chairman.

Members of Congress are elected by the American people. We are expected to answer to our constituents, and every 2 years they have the ability to fire us. The American taxpayers do not have the ability to do this with IRS officials, who have repeatedly let them down. We saw this with the targeting of tax-exempt groups, with the egregious waste of taxpayer dollars on conference spending, and now again with the discovery of an improper relationship between an IRS procurement official and a contractor.

It is not very common for witnesses to assert their privilege not to testify before Congress, but today, again, we have an IRS official who has refused to answer questions about actions he took in his official capacity. This is the second time in the last month that an IRS official has refused to answer this committee's questions. How many more IRS officials are going to come before this committee and refuse to answer to the American people? As it is, we are not learning all of the necessary facts because of these refusals to testify.

This problem is not just about Strong Castle and Mr. Roseman's refusal to testify today; this problem is bigger than Strong Castle. This problem is about IRS mismanagement, the agency's failure to the American people, and the agency's refusal to answer for what it has done. And the American people deserve better.

Mr. Chairman, I served in Iraq and Vietnam, and I am 50 percent disabled for a neck injury I suffered in 2007 in Iraq.

Mr. Castillo, I think Congresswoman Duckworth said it all for me, so I'm just going to ask you one simple question: Mr. Castillo,

I understand that you have produced text messages between yourself and Mr. Roseman that you have access to. There are, however, text messages that you have stated were lost in the iPhone migration. Will you agree to work with the committee and with AT&T in an attempt to recover these messages?

Mr. CASTILLO. Yes. And I have.

Mr. BENTIVOLIO. Thank you.

Mr. Chairman, I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. BENTIVOLIO. Yes.

Chairman ISSA. I thank you.

And thank you for helping us with AT&T, and we'll work on that after the—this meeting.

I want to sort of dwell just a moment on—with Mr. Flohr on the veterans' standing. In the transcribed interviews, which we'll make available to VA, Mr. Castillo has some—little bit of confusion in his statement, but essentially, and I'll paraphrase, that he was aware that the doctor's view that this was a football injury was inaccurate, but didn't think it was material.

If we provide that transcript to you, does that empower you to review and get accurate the original filing so that you can make an assessment as to whether or not the sequence of events, the injury and the doctor's opinion, would support all the elements necessary for a 30 percent disability?

Mr. FLOHR. Thank you for the question, Mr. Chairman.

We would certainly be willing to look at anything that you might want to share with us. I'm not saying it would make a difference. And as I said earlier in my testimony and written and oral statement, it's—a veteran who suffers an injury in service, and regardless of what type of injury or what caused it, as long as it wasn't from willful misconduct, and it was in line of duty—

Chairman ISSA. No. I understand the line of duty. It's really—I think Ms. Duckworth made it very clear that she looked at a 30 percent and a \$500-a-month or so payment for life and questioned whether or not, in light of so many severe injuries—and she was incredibly severely injured in—in the line of duty—whether or not the assessment was correct. And I think her view, and rightfully so, is there's a lot of veterans on long waiting lists, and there's a lot of veterans who see a 30 percent disability for what appears to be a rather—relatively minor injury a long time ago, and they question that.

That's the only reason that—in light of the testimony and the confusion, that we would expect that the VA would reopen, reevaluate and then make a second accurate assessment based on, if you will, reevaluating the doctor's statement, which apparently was inaccurate.

Having said that, I served for 10 years on Active Duty and 10 in Reserves. Every one of us got something broken or bent, so I'm very aware that, for better or worse, almost all of us have a hearing loss or have something. Most people who served as veterans are, in fact, to at least some small extent, and the gentleman from Michigan is to a fairly large extent from a serious accident in Iraq, service-connected disabled. And I think that's the point you were making is Congress has left you little wiggle room. If you're at the

prep school, if something occurs, and you were not in a criminal relationship, or you were in the line of duty, you're not AWOL, that, in fact, that is service-connected-disability-eligible.

We're not asking you to rewrite the law, that's our job, but we do think that—that getting it right as to percentages are important to so many veterans who essentially say, I can't work, but they also often find themselves far below 50 percent.

Mr. FLOHR. As I stated, sir, yeah, we'll be glad to look at anything you have that you want us to look at, and we certainly will—will make you aware of what we find.

Chairman ISSA. I appreciate that.

We now go to the other gentleman from Michigan Mr. Walberg.

Mr. WALBERG. I thank the chairman.

And, you know, I—just responding to one of our colleagues who questioned whether we would be getting information from the IG on targeting, certainly I think we've come to realize that there were targeting BOLOs dealing with conservatives and religious groups and also progressives. The difference is progressives got their certifications; they were approved. The issue with the targeting of the nonprogressive, supposedly, the conservative, the religious organizations is they're still waiting for approvals, and that's unconscionable.

Ms. Tucker, does Strong Castle's HUBZone decertification affect the IRS contracts currently in place with the organization?

Ms. TUCKER. Sir, as I mentioned earlier, IRS is in the—the process of separating ourselves from Strong Castle.

Mr. WALBERG. So you plan to end—end the contracts with Strong Castle?

Ms. TUCKER. It's our—it's our intention to begin the proceedings to separate ourselves from Strong Castle, yes.

Mr. WALBERG. What would keep you from separating with Strong Castle?

Ms. TUCKER. I'm—I'm not aware of anything that would prohibit us. That's what our folks in our—our counsel organization are reviewing today.

Mr. WALBERG. So we can expect that there will be a separation?

Ms. TUCKER. That is our intention, to separate ourselves from a relationship with Strong Castle.

Mr. WALBERG. So do you plan as well to stop ordering from the \$266 million IBM contract that was awarded to Strong Castle in December of 2012?

Ms. TUCKER. So as I—I mentioned earlier, the—the contracts in question, the one with laptops, IRS has never placed an order on that one, nor do we have any reason to do so. And our team has already begun the process to separate ourselves, the relationship with Strong Castle, on the IBM contract as well.

Mr. WALBERG. Will any of the dollars obligated to Strong Castle count toward the IRS's small business goals?

Ms. TUCKER. So as I believe my—my colleague from SBA indicated earlier, the—the only time, and this is to my understanding, that those obligations go against the goal is if dollars are ultimately awarded to the contract.

So, no, based on the decertification, I'm looking to my colleague from SBA, it's my understanding that, no, based upon the fact that

Strong Castle has been decertified. And this is just my understanding, so I'm—I'm going to need some help from SBA—

Mr. WALBERG. Mr. Chodos?

Ms. TUCKER. —that they would not count toward a small business award.

Mr. CHODOS. So ordinarily, Congressman, the decertifications are prospective. From the date of the certification, no further contract actions can occur with the entity as though it's certified, but contracts which have already been awarded or are being performed beforehand remain in effect unless there is an independent reason to terminate them. So if an award had been made and was performed, then they will—it will be listed as a small business contract if it was before the certification.

That also occurs with suspension and debarment when wrongdoing comes to our attention. Ordinarily those actions are prospective.

Mr. WALBERG. Ms. Tucker, the Treasury Department recently recognized Strong Castle as the 2012 small business prime contractor of the year. In light of recent developments, should this award be reconsidered?

Ms. TUCKER. So—

Mr. WALBERG. Just for the record.

Ms. TUCKER. So the recognition was given by the Department of the Treasury. Strong Castle was not nominated by Internal Revenue Service, but I believe—this is my personal opinion, because I cannot speak for Treasury—I do think what has been revealed does cast doubt in my mind.

Mr. WALBERG. Well, I would hope so.

And, Mr. Chairman, you know, I would say these hearings that continue with the type of egregious culture of moral vacuum, I think I'd call it, going on is just another example of the—of big government and what we can expect to go amok when we see a government so large that it is willing to allow these types of things to happen, in fact, foster things like this happen, foster things because of friendships or otherwise. I mean, we've even seen it in the most recent Supreme Court decision where we think more about personal desires than we do about the best good for children, or the best good for taxpayers, or the best good for our economy. We deal with promoting entities like this, and this is a perfect example of the worst case that can go on with big government.

I see my time has expired. I—

Chairman ISSA. I thank the gentleman for his—

Mr. WALBERG. —yield back.

Chairman ISSA. — his time and his comments.

We now go to the gentleman from Florida Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

I got to tell you, just the upshot of these past couple months, the IRS, to me, is an institution that is—that is terminally ill. We had admission that the agency abused its power by targeting conservative groups, which effectively silenced a substantial number of Americans for the 2012 election. We had the IRS Commissioner at that time come before us; when asked if he accepted responsibility for the malfeasance said, well, it happened on my watch, but I'm not responsible.

Now, that would not fly in virtually any other aspect of American life. I'm a Navy guy. If a Navy ship runs aground, and the captain of the ship were to say, well, yeah, we ran it aground on my watch, but that's actually some E-5's responsibility because he messed up, you'd be gone immediately.

Lois Lerner came in front of the committee, invoked her Fifth Amendment right against self-incrimination rather than answering questions for the American people. Now, I think she waived her Fifth Amendment right. I think the committee's going to have something to say about that this week. But she's been placed on leave, but she's still with the agency.

We had an interesting hearing in which an IRS official was crit—questioned about lavish spending at conferences, suites \$3,500 a night, \$50,000-plus for a Star Trek parody video. And it's interesting, they didn't know exactly how much the video cost because they didn't keep receipts for the expenses, and all we got was an apology tendered. If the IRS were investigating an American, and the American said they just didn't bother to keep receipts or offered an apology, that probably would not be the end of it. I think the IRS would hold them accountable and demand more, but yet, to my knowledge, we haven't gotten any accountability for this lavish spending and waste of taxpayer funds. It's, oh, we need more—better procedures, more training, this and that.

And so here we are another day and another invocation of the Fifth Amendment. We see, to me, a clear example of cronyism and waste of taxpayer money, but again, as my colleague from South Carolina Mr. Gowdy pointed out, no accountability.

Ms. Tucker, I appreciate when you mentioned due process, but it seems to me, where's the due process for the American taxpayer? You know, why does the taxpayer always have to take the back seat? Why is there so little accountability in this incredibly powerful bureaucracy? It's almost as if the IRS has all this power, but some of their officials are held to a lower standard than what we would expect in private business or people even in other aspects of the government, such as the military. And to me, that is not acceptable. And if that means we need to change some of the laws that govern this, then I think we absolutely have to do it.

So I think this is a profound culture of arrogance in the IRS, and I think the American people are sick of it.

And with that, Mr. Chairman, I yield back—

Mr. MEADOWS. Will the gentleman yield?

Mr. DESANTIS. —the balance of my time.

Mr. MEADOWS. Will the gentleman yield?

Mr. DESANTIS. Yes, I will.

Mr. MEADOWS. I think we have a video that I would ask that we queue up. It's a follow-up of some of the questioning, line of questioning, that we had from Mr. Jordan and myself earlier. And if we have that, if we can queue that up. I thank—I thank the chair.

Chairman ISSA. I thank the gentleman, and I think the gentleman from Florida.

I would now recognize the ranking member for a closing statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Hold it. Could you pause for a moment? I'm being told—oh, I'm sorry. If the gentleman—if the remaining time can be given to Mr. Meadows. It's a minute and 40, and go ahead and use it as a close.

[Video shown from previous hearing.]

Issa: "Based on the timeline you gave us, on May 29, 2012, the audit briefed the IG in advance of the IRS Commissioner's meeting. May 30th IG and function heads briefed the IRS Commissioner, Doug Shulman, and the Deputy Commissioners, Steve Miller and Beth Tucker, on the audit, comma, specifically that criteria targeting Tea Party Patriots or 9/12, another keyword, and other policies issues were being used to—used to in reviewing applications for tax-exempt status."

"You briefed, and that's your notes?"

George: "Yes. That's correct, sir."

Issa: "And so what—what you say on May 30th is, yeah, they're targeting these groups. That's confirmation you reached the conclusion they're targeting using these keywords."

George: "Yes. Now, just to be rec—clear, I didn't take these notes, but these are accurate."

Issa: "Right. And I'm just using these because they were delivered to us from your staff. So on May 30th, there was a "there" there, and you briefed Mr. Shulman and two others. On June 4th, you went up—"

[conclusion of video.]

Mr. MEADOWS. So, Ms. Tucker, your—your testimony does not agree with that testimony. So who—who is right?

Ms. TUCKER. Sir, when you asked me the earlier question, you asked me was I present at the briefing that Mr. George gave the Internal Revenue Service. I recalled being at that briefing.

Mr. MEADOWS. Your testimony—

Ms. TUCKER. I—

Mr. MEADOWS. What your testimony said, Ms. Tucker, was that this was a normal briefing talking about an audit. This was obviously results of which you said there were—that they were just talking about going to conduct an audit.

Ms. TUCKER. Sir, if I could, TIGTA comes in to Internal Revenue Service monthly. Mr. George—and we will be glad to try and produce this. Mr. George briefs the Internal Revenue Service on multiple topics at each one of those meetings. To the best of my recollection, his discussion of their investigation of TEGE was only one of the topics that I recollect from that briefing.

Let me also be clear. When Mr. George communicated to the Internal Revenue Service, to the best of my recollection, about concerns with the BOLO list and that—the terms that he was talking about, it was then the agency's response, as the investigation is under way right now, to say, yes, yes, use of those BOLO terms are inappropriate. That's why there's an investigation under way, to get to the bottom of what the facts are, sir.

Mr. MEADOWS. But—but you had already had an internal investigation that already indicated that that concluded on May—the first part of May, so why would that be a surprise?

Ms. TUCKER. Sir, I was not privy to any of the internal investigation.

Mr. MEADOWS. But Mr. Miller was.

Ms. TUCKER. Mr. Miller is the Deputy Commissioner—or was the Deputy—

Mr. MEADOWS. My time's expired. I appreciate the indulgence.

Chairman ISSA. Would the gentleman yield for just a second?

Mr. MEADOWS. Yes.

Chairman ISSA. Ms. Tucker, hopefully I can bring a common answer here. So I'm not trying to put words in your mouth, but let me try to paraphrase.

The IG said there was a “there” there in that meeting. You saw the video. You were in the meeting, you heard it, but your testimony today seems to be primarily that, regardless of that, you said to yourself, there's a process, it's going to go forward, and it's not my job, because it's not within my lane.

Is that a fair paraphrasing of the series of answers—questions and answers?

Ms. TUCKER. Yes, sir, because the Deputy Commissioner structure at the Internal Revenue Service, just as if TIGTA was there giving feedback on an audit or a report that's about to be issued, then the responsibility for the follow-up actions, just like the report someone referenced earlier today, the—the purchase card audit. TIGTA briefed IRS a couple of months back in one of these monthly meetings and said, we have done an audit of the purchase cards. Here is what our findings show, that 99.75 percent of the purchase cards used at IRS are correct, but there are some concerns.

That is my take-away. I own that in my role at IRS. It is my job to then follow up and—

Chairman ISSA. Okay.

Ms. TUCKER. —make sure corrective actions take place.

Chairman ISSA. Go ahead, Mr. Cummings, with—

Mr. CUMMINGS. Yeah. I just want to—just to clarify, I just want to be real clear. First of all, Ms. Tucker, I—I have been sitting here watching you, just listening, and I just want you to know I believe you. I don't know what that means to you, but it means a lot to me. I believe—

Ms. TUCKER. It means a lot to me, sir.

Mr. CUMMINGS. I believe you. And the reason why I say that is, as I understand it, IRS, you got a top person, and then you've got two deputies. And I think you tried to explain it to us probably 10 times now is that you are on one side dealing with IT and all this stuff, and I guess more like the nuts and bolts—is that—

Ms. TUCKER. Yes, sir.

Mr. CUMMINGS. And the other side deals with things like what?

Ms. TUCKER. Like the—

Mr. CUMMINGS. Tax exempt—

Ms. TUCKER. —administration, audits, collections.

Mr. CUMMINGS. And so I just—just going back to what the chairman was just asking you, so when you hear—even when you hear this stuff that's regarding tax-exempt and stuff like that, I'm just—I'm just guessing, I guess you're sitting there saying, okay, you know, that is not good, but let me—I'm zeroing in on what I'm supposed to do. How many employees come under you?

Ms. TUCKER. Roughly 11,000.

Mr. CUMMINGS. Eleven thousand, your 11,000 employees and all your responsibility. So I just—so it's not that you didn't care; is that right?

Ms. TUCKER. No, sir. And I—I'm troubled if that is the impression that some on the committee are taking away from this.

To the best of my recollection—and, again, IRS is a very large organization. TIGTA and GAO do multiple oversight audits for Internal Revenue Service. They are in briefings, the Commissioner and the two Deputies, monthly, if not more often. In light of recent events, Mr. George and his team are now coming in weekly to brief on issues.

Based on my recollection of what was shared at that meeting, Mr. George was talking about an audit of TEGE. He also was talking about concerns. It was my takeaway based on that meeting that IRS would then be taking appropriate action to deal with that, not that it was something that was in my responsibility to leave the room and begin working with folks in TEGE or elsewhere to take any action.

And I don't—I implore you, that is not me trying to shirk responsibilities. That is me focusing on what my responsibilities are at Internal Revenue Service.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you.

Mr. Jordan, does that answer your question, or do you have further follow-up?

Mr. JORDAN. If I could, Mr. Chairman, I'd appreciate—

Chairman ISSA. The gentleman is recognized for a last round.

Mr. JORDAN. I thank the chairman for his indulgence.

I appreciate what the ranking member said, but the gravity of what took place here, it seemed to me everyone in a position of influence would want to come forward and set the record straight.

If I could quickly, Mr. Chairman, I just want to put up one email that—this is an email from March 9th, 2012, Mr. Floyd Williams, in response to an inquiry from Senator Hatch about the 501(c)(4) situation. And the FYI—it's copied to all these folks, but it says, "Latest volley in the 501(c)(4) battle." And I think it's important to note who was copied on this email. Ms. Tucker was copied, Sarah Ingram, Nancy Marks, Lois Lerner, Steve Miller.

Ms. Tucker said she had no—this is not her area. She had nothing to do with it. And yet, 2 months prior, she is getting the latest in the battle about the 501(c)(4) scandal that's going on. And yet today she continues to say it had nothing to do with her.

If it had nothing to do with her, why is she copied in on an email that focuses in on this very issue 2 months prior to when she said she first heard about it?

And, with that, I'd yield back, Mr. Chairman.

Chairman ISSA. Well, the gentlelady may answer. I think there was a question there.

Ms. TUCKER. Yes, sir.

So our legislative affairs function routinely copies the Commissioners and Deputy Commissioners on correspondence that is under way between Congress. That is not an unusual situation.

Mr. JORDAN. Why is the term "battle" used?

Ms. TUCKER. I have no idea, sir.

Mr. JORDAN. Okay. Thank you.

Chairman ISSA. I thank the gentleman.

Mr. CUMMINGS?

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I want to thank all of our witnesses for being here today.

Mr. Castillo, I must tell you that your testimony is alarming, and it concerns me greatly, and I'm sure as it does other members of this committee.

While I said it in a kind of joking way when I referred to Michael Jackson's song, "Man in the Mirror," I really—and when I read your testimony and then I listened to what you said, I've got to tell you, you've got to look closer in the mirror. And, you know, I tell my kids, I tell them, whenever you're constantly complaining that people are doing you wrong, I said, sometimes you need to look at yourself if you consistently find yourself in that position.

And so I—but the main thing is that I think we need to try to straighten this mess out. And I'm glad, Ms. Tucker, that you all are taking the steps that you all are taking.

Our country is—I think we deserve a strong program. I was just telling the chairman about how much I admired his ability to do business and come from a small company and to make it successful. And I want everybody to have those kinds of opportunities to open the door, but they will never get there if we abuse programs that are to help them get there.

And so I just hope that when you go back, Ms. Tucker, you will reiterate that to your people looking at all of these procurements, so that we can have that balance, so that we can actually help people achieve their great dreams and not be like the people that I talked about in my opening statement who worked so hard for so long, pushing, knocking at doors, trying to get to opportunity, and then they die before they get there, and so their dreams are locked up in the casket with them.

And so, with that, I want to thank you, Mr. Chairman. Again, I think it was a good hearing.

Chairman ISSA. I thank you, Mr. Cummings.

In closing, often a hearing is about a specific action. And, Ms. Tucker, it appears as though a great deal will come as a result of the preparation for this hearing and the report we put out. I'm going to work with the ranking member to turn it into a full committee report. It's essentially a staff draft at this point. And we will follow on with some of what we learned here today.

But I'm going to include, in all likelihood, in that report or an additional series of letters a number of things that I could not help but recognize today.

Ms. Tucker, I think to say that the IRS is an organization currently in crisis is a given. I have some confidence and a lot of hope that the new Commissioner, Acting Commissioner, will, in fact, be able to bring that about. And for the 100,000 or so career professionals that work at the IRS, I wish you well in doing that. It's important to the American people.

Mr. Castillo, this is not about you, but, in fact, this hearing, I believe, was illustrative of some problems that our government has.

Mr. Flohr, I believe that our committee is going to be sending a number of things, and Ms. Duckworth will undoubtedly be working

on it with us. And that is that, in a time of limited resources, we do need to define service-connected disabled in a way that doesn't automatically trigger virtually every American who served, myself included, from qualifying.

We also need to be better and more consistent on whether or not—and we can legally empower you to be more accurate. Ms. Duckworth was correct that a strain, a crack, a twisted ankle 27 years later that clearly didn't impair the performance of somebody going through their life—if we were dealing with workers' comp, we would not be as generous as to turn that into \$6,000 a year for the rest of their life and other benefits. There's no question this is far greater in the current dollars than I think the taxpayers believe for what the record appears to show.

That's not to take away from the legitimacy of an application, but Congress has an obligation to work with the Veterans Administration to get these numbers better. At the same time, I know you're acutely aware that we are dismayed at how long our Iraq veterans and Afghanistan veterans are waiting to get a determination.

Mr. Chodos, the fact is you got a little bit of a pass here today, but I must tell you that I'm disturbed that the process and the numbers are such that, without either regulation changing or coming to Congress with a series of changes that you need, we are not accurately reflecting HUBZones, we're not accurately reflecting the real benefit that is going to the people that Mr. Cummings and I want to see get it.

Now, much of it may be legislative, but I would charge you to go back to your Cabinet Secretaries and say, you know, we owe Congress some proposed changes. Whether it's cost savings or it's benefit being more targeted, you know, I believe that this is part of what this hearing is showing.

There may have been—there clearly were some violations of the rules, some incorrect statements made. But I think even if none of those were made, we still would probably, from this side of the dais on a unanimous basis, have seen a travesty of what was intended versus what was allowed, what was achieved versus what was scored.

So I would hope that as you go back today, recognize that we will send, at a minimum, letters asking you to be part of the process of getting the reform.

I thank Mr. Sisk. The GAO is our partner in our branch, and it's critical that we have your support. You're constantly bringing us some of these items and high risk. Perhaps you will be and your organization, on behalf of those of us in Congress, will be a hub for a lot of this.

But it's the intention of this chairman to bring to the committees of jurisdiction specific recommendations for change that could narrow or prevent this from happening in the future.

I want to thank you all for your testimony today.

Ms. Tucker, I'll close only with one thing: a message, I think for the IRS, and it's a message for the IRS, for the State Department, and for every part of government. This committee, over my short tenure as chairman, has a consistent frustration, and that is: Messages are received that should alert people. Often it's not within

their lane, it's not their job, but it still bothers us that every single American worker in the Federal Government doesn't say, "Well, but we've got to get the truth out there."

The world is seeing this NSA crisis right now with a vague suggestion that somehow it's because nobody was listening. This committee is listening. We want to hear. Every Federal employee owes it to Congress and to the American taxpayer to be a whistleblower if they see something wrong, even if it's as benign as an Acting Commissioner saying we're not targeting, and then they become aware in some way that there's a likelihood that they are targeting and that Congress is not aware that they've been misled.

That was true for 10 months with Fast and Furious. It was true for a similar period of time here with the IRS and the targeting. And I believe that we're still dealing with trying to get to the whole truth with Benghazi.

So those are outside of today's hearing, but I think you get the point, that I'm calling on every Federal worker to recognize that this Congress passed a major new whistleblower legislation so that we could invite people to call your Congressman, write your Congressman, or come to the committees and tell us if you have some doubt. It's okay to be wrong as a whistleblower; it's really wrong to keep a secret you think is wrongdoing.

Lastly, I would be remiss if I didn't mention that every part of government has an Inspector General. And the IGs are the first and most logical report to by Federal workers, and I hope they will always do that.

And, with that, I thank Mr. Cummings, and we stand adjourned. [Whereupon, at 12:11 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

May 23, 2013

Sent via the HUBZone Certification Tracking System and Facsimile

Braulio M. Castillo, President
Strong Castle, Inc., FKA, Signet Computers, Inc.

Washington, DC 20001

RE: Notice of Final Decertification

Dear Mr. Castillo:

This letter is to notify you that Strong Castle, Inc. (SCI) f/n/a Signet Computers, Inc. has been decertified and removed from the Small Business Administration's (SBA) list of certified HUBZone firms. The reason for the decertification is explained below.

Proposed Decertification Allegations and Request for Information

SBA received information during a HUBZone status protest, which was dismissed for reasons unrelated to specificity, but which contained information and allegations which led SBA to believe that the firm may no longer meet the HUBZone principal office or 35% residency requirement. Therefore SCI was proposed for decertification on January 31, 2013.

In its notice of proposed decertification, SBA claimed that SCI did not meet the HUBZone program's principal office and 35% residency requirement. SBA contended that the address listed as SCI's principal office, [REDACTED] Washington, DC [REDACTED], may not be the actual principal office location because the firm stated that seven employees worked at this location but the office space is only 300 square feet and may not be able to accommodate seven employees at that location. SBA contended that SCI has several affiliates with various offices (not all were located in HUBZone areas) that appear to be separate entities, but are inextricably connected and this could affect SCI's principal office location. Because SCI may share employees with its purported affiliates, SBA claimed that SCI may not meet the 35% HUBZone residency requirement.

In its proposed decertification notice SBA alleged that Signet Computers was also affiliated with Strong Castle Technologies LLC, Strong Castle, Inc., Castle Strong, LLC, and Strong Castle LLC. SCI provided evidence to address the following: (1) The company Castle Strong, LLC of

Nevada was/is not related to the owners of SCI or its other business; (2) ¹Signet Computer's Inc.'s^{2 3} name was changed to Strong Castle, Inc. in October 2012; (3) Strong Castle, LLC's name was changed to Strong Castle Technologies, LLC in October 2012. SBA has determined that Strong Castle, Inc. and Strong Castle Technologies, LLC are affiliated however, there are only two businesses that the owners of SCI own, (a) Strong Castle, Inc. and (b) Strong Castle Technologies, LLC and when the employees of these two firms are combined the number of employees are less than 150 employees. SCI's NAICS code is 541519, "Other Computer Related Services" and the size standard is 150 employees. SCI currently has thirteen employees. Its affiliate, Strong Castle Technologies, Inc. did not have any employees at the time of SBA's notice of proposed decertification or currently. The firm does not have any other affiliations and based on the information provided the firm is a small business according to SBA size standards.

Firms that are certified as eligible HUBZone small business concerns (SBC) must continue to meet all the program requirements to retain their eligibility. See 13 C.F.R. Part 126 Subpart E. The United States Court of Federal Claims in response to a plaintiff's claim that HUBZone SBCs did not have an ongoing responsibility to meet the requirements of the HUBZone program stated the following, "Thus, the court concludes that, except for performance during an existing [HUBZone contract], the 35% residency requirement is a continuing requirement." Mission Critical Solutions v. United States, 96 Fed.Cl. 657, 667 (2011). SBA therefore selected three specific times and required SCI to provide evidence of its continued eligibility for the program; date of SCI's certification into the program (06/22/2012), the date the firm was awarded a contract from the IRS for Solicitation No. TIRNO-12-Q-00083 (12/07/12), and at the time of SBA's notice of proposed decertification (01/31/13):

- an explanation of the relationships of SCI and all of its affiliates.
- company payroll records for SCI and all of its affiliates showing all employees and number of hours worked per week at the times in question;
- if there are any employees that worked less than 40 hours during the week, SCI and its affiliates must provide the following to demonstrate that those employees worked at least 40 hours in a month:
 - o payroll records that cover the four-week period leading up to, and ending with the date in question;
- a statement explaining whether all of the officers of SCI and its affiliates are shown as employees on the payrolls;
- a statement explaining whether all individuals that work for SCI and its affiliates are shown as employees on the payroll, including: individuals obtained from a temporary

¹ In January 2012 the Castillo's purchased 100% of shares of Signet Computers

² At the time of the bid for the IRS contract the company name was Signet Computer's Inc, thus the contract was awarded under that name.

³ Firm notified SBA of this material change November 2012.

- employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement;
- copies of state unemployment tax filings for SCI and its affiliates for the quarter when the offer was submitted as well as the most recent filings;
- records indicating the home address of each HUBZone resident employee of SCI and its affiliates at the times in question, including copies of driver's licenses or voter registration cards showing the employee's home address is in a HUBZone;
- a copy of a HUBZone map determination for each employee residing in a HUBZone, including the name of each employee on the HUBZone maps;
- records indicating the location at which each employee of SCI's and its affiliates performed his/her work;
- records indicating those SCI employees and its affiliates' employees who were performing the majority of their work at job-site locations to fulfill specific contract obligations at the times in question, identifying
 - the job-site location at which each employee performed his or her work
 - the contract (include a copy of the front page and other pages of the contract showing where the work must be performed) and contract number for that job-site location, and
 - the percentage of work performed by the employee at that location;
- copies of leases or deeds of all of SCI's and its affiliates locations, including its principal office;
- copies of electricity, water, etc. bills for SCI's principal office;
- copies of SCI's and its affiliates most recent federal corporate income tax return;
- the by-laws, articles of incorporation, and/or articles or organization for SCI and its affiliates;
- a statement and other information explaining whether the company shares employees, offices or equipment with another business concern; and
- an explanation and documents addressing the specific allegations set forth in this proposed decertification.

In response to this request, on 03/04/13, SCI sent the following: letter from the firm's attorneys; signed declaration of Braulio Castillo, amended and restated stock purchase agreement, Strong Castle, LLC Certificate of Fact, Signet Computers, Inc. Certificate of Amendment, Strong Castle Inc, Payroll Records for 06/22/12, 12/7/12 and 01/31/13; Strong Castle, LLC Payroll Records for 06/22/12; Signet unemployment tax filings that cover the dates 06/22/12 and 12/7/2012; Strong Castle, LLC unemployment tax filings for 06/22/12; declarations, residential lease documents and HUBZone maps for Strong Castle, Inc.'s employees; Signet/Booz Allen task order; lease agreement for the [REDACTED] location and water and Comcast bills; Signet's 2011 tax return; Strong Castle, Inc.'s 2011 tax return and photographs of the [REDACTED] office.

In addition, SBA conducted an unannounced site visit to [REDACTED], the purported principal office of SCI, on April 16, 2013. One SCI employee was present at the time. That employee explained to SBA that the other employees only work part-time, and so it is not uncommon for him to be the only employee in the office. He stated he was the only employee who worked at the office full-time. The office consisted of two rooms with tables and several desktop personal computers. There was also a locked cabinet that contained laptop computers for the employees not present. There appeared to be sufficient space at the tables and enough chairs for all the employees to sit at the tables and work. Given the part-time nature of most of SCI's employees, and specifically almost all of the employees purported to work at the principal office, the results of the site visit is informative but ultimately non-conclusive.

In response to the notice of proposed decertification on 03/21/2013 SBA requested additional information/clarification from SCI and on 3/27/2013 the firm sent the following statement, along with attachments of employee's driver's license, to SBA:

With respect to the seven employees who work at Strong Castle's HUBZone office at [REDACTED] Washington [REDACTED]

[REDACTED], item No. 4 in the SBA's March 21 request for clarification asks for "driver's licenses and/or utility bills . . . that includes the date of each payroll period referenced in the proposed decertification."

We presume that this request seeks to confirm the HUBZone residence of the employees in Strong Castle, Inc.'s principal office.

Signet Computers, Inc. provided the drivers licenses of [REDACTED] [REDACTED] with its HUBZone application materials. Copies of those driver's licenses are attached hereto.

Because those employees are students at the Catholic University of America, their drivers' licenses do not reflect the address of their primary residence in the HUBZone. For that reason, Strong Castle's March 4, 2013 response to the SBA decertification letter includes lease documents for all seven employees (Exhibit 13) as well as sworn declarations from the same employees regarding their residency in a HUBZone (Exhibit 12).

With respect to employees for whom the company did not previously provide driver's licenses [REDACTED], it is our understanding that they do not directly receive or pay utility bills under the terms of their lease agreements. It also is our understanding that the HUBZone office customarily has not required documents such as drivers' licenses to establish residency for university students.

While we can request copies of the other employees' driver's licenses, those licenses will not reflect the address of their primary residence in the HUBZone.

Alternatively, we can request utility bills from the employees' landlords and the Catholic University for the dates requested.

Is the SBA asking for copies of the employees' out-of-state driver's licenses and/or the utility bills from their landlords and the University?

SBA responded to the 03/27/2013 email on 03/28/2013 and advised the firm to:

Please provide the following to include the date of each payroll period referenced in the proposed decertification notice for each HUBZone resident employee that is also a student of a university. In response to your statement "the HUBZone office customarily has not required documents such as drivers' licenses to establish residency for university students" please note that in some cases SBA may requests those documents among other supporting documents to confirm HUBZone residency status.

- Transcripts
- Registration
- Schedules

Please provide this information NLT April 1, 2013.

On March 21, 2013 SCI responded to SBA's request for additional information/ clarification with the following:

1. SBA - We note that the former owner of Signet Computers, Inc., [REDACTED] was an employee at the time of the firm's certification as a HUBZone SBC. When did Mr. [REDACTED] employment end with the applicant firm? Is Mr. [REDACTED] currently involved in any activities conducted or performed by Strong Castle, Inc.?
SCI's response: Mr. [REDACTED]'s employment with the firm ended on September 28, 2012. He is not involved in any activity or conduct of the firm in any respect.
2. SBA - [REDACTED] is listed on the firm's 12/31/12 Virginia quarterly unemployment form but not on the firm's payroll for that period. Please explain.
SCI's response: As noted above [REDACTED] was an employee of the firm on the last business day of the third quarter of 2012 (*i.e.*, on September 28, 2012). The firm issued Mr. [REDACTED] last paycheck in October 2012. Because Mr. [REDACTED] last paycheck was issued in the final quarter of 2012, he is listed on the firm's Virginia quarterly unemployment form dated December 31, 2012.
3. SBA - Why is [REDACTED] listed on 2 separate payrolls (1/31/13 - 1/31/13, 7 hours) and (1/17/13/ - 1/31/2013, 33 hours) for the same period?
SCI's response: Mr. [REDACTED] worked seven hours on January 16, 2013. However, the firm's payroll software (QuickBooks) erroneously deemed January 17, 2013

to be the first day of the pay period. For that reason Mr. [REDACTED]'s payroll records reflect that he worked thirty-three hours during the period January 17, 2013 to January 31, 2013. In order to make sure that Mr. [REDACTED] received payment for the seven hours that he worked on January 16, 2013, Mrs. Castillo manually created a pay period of one day in duration (January 31, 2013 to January 31, 2013) and attributed seven hours to work that pay period.

4. SBA - Provide driver's licenses and/or utility bills for [REDACTED] and [REDACTED] that includes the date of each payroll period referenced in the proposed decertification.

SCI's response: As discussed in correspondence between the firm's outside counsel and Ms. [REDACTED], the employees listed in Question No. 4, with the exception of Mr. [REDACTED], are enrolled at the Catholic University of America ("CUA"). For that reason, their driver's licenses do not reflect the addresses of their primary residences in the HUBZone. Moreover, the same student employees do not receive utility bills under the terms of their lease agreements. Accordingly, in lieu of driver's licenses and utility bills, the SBA has requested that the firm provide, by April 1, 2013, copies of the following documents for each HUBZone resident employee who is also a student of a university – Transcripts, Registrations, and Schedules.

5. SBA - Explain why the firm's payroll records include the firm's Leesburg address and not the firm's purported principal office address.

SCI's response: The firm uses the address at [REDACTED] Leesburg, Virginia as a corporate headquarters address. The Leesburg location is close to the Castillos' home, and receiving mail at the post office box at that location is convenient to the Castillos. The firm's principal office is located at [REDACTED] NW, Washington, DC. The HUBZone regulations do not require a company to locate its headquarters in a HUBZone.

6. SBA - It appears that current payments (12/2012) from the IRS list the payments in the former name "Signet" instead of the new name Strong Castle, Inc. and also list the location as [REDACTED] Arlington, VA. Please explain.

SCI's response: The payments referenced in Question No. 6 concern IRS contract vehicles relating to the firm's GSA Schedule 70 Contract (Contract No. GS-35F-0319Y). The firm understands that it is the practice of the IRS not to implement changes to a contractor's corporate name or address until the relevant changes are first made by the GSA.

By letter dated December 7, 2012, the firm requested that GSA recognize the change of the firm's name from Signet Computers Incorporated to Strong Castle, Inc. A copy of that letter is attached as Exhibit 1. On January 11, 2013, GSA informed the firm that the change of name request was under review. A copy of that notice is attached as Exhibit 2. The firm understands that GSA and the IRS have now formally recognized the name change.

With respect to the reference to the [REDACTED] Arlington, VA address, the firm has made several attempts to correct the information in CCR and SAM, but has not yet been successful.

Note: An attachment as mentioned above; the firm did provide a copy of a December 7, 2012 letter from the firm to GSA requesting that GSA recognize the change of the firm's name from Signet Computers Incorporated to Strong Castle, Inc. and a January 11, 2013 email from GSA informing the firm that the change of name request was under review.

7. SBA - The 12/31/2012 quarterly unemployment statements for the states of Alabama, Massachusetts, Virginia, Florida, District of Columbia and the Federal 940 and 941 are filed under the name of Signet and not Strong Castle, Inc., several months after the firm changed its name. Please explain.

SCI's response: The firm uses QuickBooks for its payroll software application. The QuickBooks application will not reflect the firm's name change to Strong Castle, Inc. until the IRS recognizes the change of name.

8. SBA - Provide the days of the week and the number of hours each employee performs their work at the [REDACTED] Washington, DC location.

SCI's response: The daily work schedule for the H Street employees is set forth below:

Day	[REDACTED]						
Mon	8:30-5:30	1:00-7:00	9:00-12:30	9:00-12:30	9:00-2:30	9:00-12:30	9:00-2:30
Tue	8:30-5:30						
Wed	8:30-5:30		9:00-12:30	9:00-12:30	9:00-2:30	9:30-5:00	9:00-2:30
Thu	8:30-5:30						
Fri	8:30-5:30	1:00-7:00	9:00-12:30	9:00-12:30			

9. SBA - In a previous SBA communication, your firm indicated that the building was recently renovated, which included new electrical services (which the public utility ([REDACTED]) installed one of two meters) however [REDACTED] had not installed the meter serving the upper floors where Signet Computers, Inc. and their affiliate, Strong Castle, LLC occupy. According to a telephone conversation with [REDACTED]

and SBA, [REDACTED] advised that this location, [REDACTED], Washington, DC location, is only charged for impervious surfaces such as: rooftops, paved driveways, patios, and parking lots, are major contributors to rainwater runoff entering the District's sewer system. What company provided services for electricity, heat and/or cooling, water?

SCI's response: The firm understands that [REDACTED] has represented that it will install the second electrical meter for the upper floors of the office building in the near future. [REDACTED] provides only electrical service. [REDACTED] provides water and sewer service. The firm understands that [REDACTED] is currently estimating (and not actually measuring) the building's usage. [REDACTED] has represented that the building is on a list to receiving a new water usage meter, but will not say when the meter will be installed. According to the property manager for the [REDACTED] office, [REDACTED] at one time billed only for impervious surfaces. The water/sewer bill now includes the impervious surface charge and a charge for estimated water/sewer usage.

The firm also provided a December 7, 2012 letter from the firm to GSA requesting that GSA recognize the change of the firm's name from Signet Computers Incorporated to Strong Castle, Inc. and a January 11, 2013 email from GSA informing the firm that the change of name request was under review.

On 04/01/2013 SCI, via email, SCI provided the following statement and request:

Since receiving SBA's request of March 28, Strong Castle, Inc. and its employees have been diligently working to collect the Transcripts, Registration documents, and Class Schedules of the Company employees who are students of the Catholic University of America ("CUA").

Thus far, we have been able to collect Transcripts and Class Schedules for some, but not all of the student employees. Furthermore, we understand that registration for CUA classes is conducted online, and that CUA students therefore do not receive copies of "Registration documents," as such. In light of the foregoing, we respectfully request that SBA withdraw its request for Registration documents, and extend the due date for the submission of Transcripts and Class Schedules until Wednesday, April 3. In the event we are able to provide the Transcripts and Class Schedules before April 3, we will make every effort to do so.

Via email SBA responded to SCI's 04/01/2013 communication with the following:

Mr. [REDACTED] We expect the receipt of the required documents (Transcripts, Registration and Schedules) for all employees NLT 4/3/2013, 12:00pm EST because we believe that the University will provide this official information if requested by the student. Thank you.

On 04/03/2013 SCI provided, via email, the following:

Strong Castle, Inc. is pleased to provide its response to the SBA's request for Transcripts, Registration and Schedules for the company employees who also are students at the Catholic University of America. This letter responds to the Small Business Administration's ("SBA") March 28, 2013 email requesting "Transcripts," "Registration," and "Schedules" for each HUBZone resident employee that is also a student of a university. The documents listed below are provided as Exhibits to this letter. Attachments: Transcripts, registrations and schedules for [REDACTED]

SCI employs several college students. Information seemed to show that that hours and days that SCI's payroll records document certain students performing work at the firm's principal office on days and at times that these students had exams. SBA provided information to SCI that its payroll records may have been false. On May 8, 2013, SBA requested the following:

SBA has received information that a majority of Signet/Strong Castle's employees are current college students. Further the information shows that on 12/12/12 an employee had two finals exams. The 1st exam was scheduled from 1:00 – 3:00pm and the second exam was scheduled from 3:15 – 5:15pm. Strong Castle payroll that covers this date and these times records that the student also worked 9 hours on that day. Please explain the circumstances that allowed this employee to take two final finals and work on the same day at Signet/Strong Castle's principal office. Has Signet/Strong Castle provided SBA with any other inaccurate payroll records (records showing employees working hours they did not in fact work or working at locations they did not work at it)? If so please provide SBA with a complete and detailed list of all inaccuracies in any of Signet/Strong Castle's payroll records and an explanation of each instance.

SCI provided the following in response to SBA's inquiry:

In the May 8th request, you note that a Strong Castle employee who is a college student recorded time worked at Strong Castle on a day on which the student had two exams. Although you do not identify the student in question, you ask that Strong Castle explain the circumstances that permitted the student to take two exams and work on the same day. In response to the SBA's request, Strong Castle reviewed the time sheet and payroll records of those employees who attend the Catholic University of America ("Catholic") to compare their time worked during December 2012 with their final exam conducted during that period. For the reasons outlined below, Strong Castle's student employees were able to take exams and complete their work obligations.

As the result of its review, Strong Castle identified two instances in which those employees who attend Catholic mistakenly recorded time worked during their exam period. The first instance involved ██████████ who had a series of final exams on December 12th from 1:00 p.m. to 3:00p.m. and from 3:15p.m. to 5:15p.m., and on December 14th from 8:00 a.m. to 10:00 a.m. and from 1:00 p.m. to 3:00p.m. Declaration of ██████████ ("██████████ Decl.")⁴ (attached as Exhibit 1). Mr. ██████████ did not have a final exam on December 13th, and worked nine hours at the Strong Castle office. ██████████ Decl5. Following the SBA's May 8th request, Mr. ██████████ checked his time sheets and determined that he had mistakenly recorded time worked on December 13th in the December 12th time entry on his time sheet. ██████████ Dec 16.

The second instance involved ██████████ who had exams schedule on December 10th from 3:15p.m. to 5:15p.m., on December 11th from 8:00a.m. to 10:00 a.m., and on December 13th from 3:15p.m. to 5:15p.m. Declaration of ██████████ ("██████████ Decl.")⁴ (attached as Exhibit 2). Mr. ██████████ exam on December 11th took only 4.5 minutes, and he worked six hours at the Strong Castle office following his exam. ██████████ Decl5. On December 12th, Mr. ██████████ did not have any exams and worked eight hours at Strong Castle. *Id.* Following the SBA's May 8th request, Mr. ██████████ reviewed his time sheets and believes that he mistakenly entered his time for work performed on December 11th on his December 12th time sheet entry, and for work performed on December 12th on his December 11th time sheet entry. ██████████ Decl6. Company records will be corrected in accordance with each student employee declaration.

Strong Castle has reviewed time records in response to the SBA's May 8th request, and identified the two time entry discrepancies discussed above. Apart from these discrepancies, Strong Castle is not aware of any other inaccuracies with respect to payroll records submitted to the SBA. Declaration of Michelle Castillo ("Castillo Decl.")⁶ (attached as Exhibit 3).

SBA also asked SCI questions regarding the accuracy of information provided to SBA:

If Signet/Strong Castle cannot at this time verify that all of its records are accurate please provide SBA with a statement to that affect. Additionally, in support of the company's application Strong Castle submitted a copy of a signed lease for two of Strong Castle's part-time college student employees. The address on the lease was in a HUBZone. Is the lease that was provided to SBA a copy of the actual lease that was signed by all the parties? If not please provide an explanation for why an altered lease was submitted to SBA without providing SBA any indication

that the lease provided had been altered after it was signed, but prior to submittal to SBA. Your explanation should provide a detailed explanation of who altered the lease, who knew the lease was altered, and who decided to provide an altered document to SBA. Also please confirm that all other leases or any other signed contract that was provided to SBA has not been altered by Strong Castle/Signet, or employees of Strong Castle/signet prior to being submitted to the SBA. We also note that you provided an Addendum to Lease for [REDACTED] dated May 3, 2012. Provide a full copy of the executed lease for Mr. [REDACTED] resident location [REDACTED] Washington, DC 20017.

In response to this question SCI provided the following response⁴:

With respect to student leases provided to the SBA, Strong Castle notes that as part of its application for HUBZone certification submitted to the SBA, Strong Castle provided an addendum to the lease executed by [REDACTED] on May 3, 2012 for [REDACTED] in Washington, D.C. Castillo Decl.7. Strong Castle had submitted the original lease signed by [REDACTED] for [REDACTED] as part of its initial HUBZone application submission in March 2012. *Id.* The original lease expired in May 2012, during the pendency of the SBA's review of Strong Castle's HUBZone certification request. *Id.* SBA notified Strong Castle that the lease had expired, and Strong Castle subsequently submitted the addendum to the lease executed by Mr. [REDACTED]. *Id.* A copy of Mr. [REDACTED] original lease for [REDACTED] is attached as Exhibit 4.

All copies of student leases submitted by Strong Castle to the SBA are accurate to the knowledge of Strong Castle. Castillo Decl.8. As reflected in her declaration, Ms. Castillo is not aware of any alteration, whether by Strong Castle or any Strong Castle employee, of any lease or other signed contract submitted by Strong Castle to the SBA.

SBA also requested information regarding the accuracy of the firm's payroll:

Are the payroll provided to SBA a copy of the actual payrolls that covered the date the firm was approved, the date the firm was awarded the IRS contract, and the date of SBA's notice of proposed decertification? If not please provide an explanation for why altered payrolls were submitted to SBA without providing SBA any indication that the payrolls provided had been altered prior to submittal to SBA. Your explanation should provide a detailed explanation of who altered

⁴ SCI also provided signed declarations from students [REDACTED] stating that they mistakenly entered the wrong dates/times that they worked. A signed declaration from Michelle Braultto stating that "I am not aware of any other inaccuracies with respect to payroll records submitted by Strong Castle to SBA" and that "All copies of student leases submitted by Strong Castle to the SBA are accurate to the knowledge of Strong Castle."

each payroll, who knew the payrolls were altered, and who decided to provide an altered document to SBA.

SCI provided the following response to SBA's question:

In your May 8th request, you asked about payroll records submitted by Strong Castle to the SBA, specifically whether the copies were actual copies of Strong Castle payroll records. All copies of payroll records submitted by Strong Castle to the SBA reflect Strong Castle's actual payroll records for the dates reflected on the specific payroll documents. Castillo Dec 19. As reflected in her declaration, Ms. Castillo has not made any modifications to time entries made by Strong Castle employees into the timekeeping and payroll system. *Id.* The only change to information in the payroll system is a change to administrative information unrelated to time entries by Strong Castle employees. *Id.* Prior to submitting the payroll records to the SBA in response to its request for payroll information, Ms. Castillo updated the company's address to reflect its current location and the address of one employee who had moved during his employment with Strong Castle. *Id.*

SBA became aware of three independent contractors utilized by SCI, and requested information from SCI regarding their relationship to the firm, and whether the firm utilized any other independent contractors. SBA provided SCI with the following statement and requests:

Email communication from May 2012- August 2012 indicates that [REDACTED]@sginet-computers.com was/is an employee of Strong Castle, Inc. Email communication from November 2012 and February 14, 2013 indicates that [REDACTED]@strong-castle.com was/is an employee of Strong Castle, Inc. Other documentation received by SBA states that Ms. [REDACTED] is part of the firm's management team. Email communications from December 2012 – January 2013 indicates that [REDACTED]@strong-castle.com was/is an employee of Strong Castle, Inc. Documents received by SBA include emails to and from [REDACTED]@sginet-computers.com and Ms. [REDACTED] signature block [REDACTED] Contracts Manger Signet Computers, Inc." Neither of the individuals above are shown on any of the payroll documents provided in connection with SBA's notice of proposed decertification. We also note that your most recent communications to SBA in connection with the notice of proposed decertification clearly states that Strong Castle Technologies, LLC is not active and does not have any employees or contracts which clearly indicate that these individuals did not work the affiliate, Strong Castle Technologies, LLC at the time of Strong Castle, Inc.'s approval, award, and notice of proposed decertification.

Does Signet/Strong Caste currently have any independent contractors performing work on behalf of Signet/Strong Castle? Did Signet/Strong Castle have any

independent contractors performing work on behalf of Signet/Strong Castle at the time of its HUBZone application? Please provide the following information with regard to any independent contractors:

- The name(s) of all independent contractor(s);
- Signed copies of all executed contracts;
- Detailed description of work performed by all independent contractors including the number of hours work, the type of work performed, and where they perform their work
- Please provide copies of all invoices from the independent contractors, and proof of payment for all invoices;
- Do any of the independent contractors have or have they had in the past, business cards issued by Signet/Strong Castle or that have a reference to Signet/Strong Castle on them, if yes please provide SBA with a copy of the business card;
- Do any of the independent contractors have email accounts issued to them by Signet/Strong Castle, if so please provide SBA with individual's email address.

In response to SBA's request regarding independent contractors, SCI provided the following response:

In your May 8th request, you asked a number of questions and requested information regarding independent contractors employed by Strong Castle, specifically: (1) does Strong Castle have any independent contractors performing work on its behalf; (2) did Strong Castle have any independent contractors performing work on its behalf at the time of its HUBZone application; (3) the name of any independent contractors engaged by Strong Castle; (4) signed copies of all executed contracts; (5) a detailed description of work performed by independent contractors, including the number of hours worked, the type of work performed, and where work was performed; (6) copies of all invoices from the independent contractors and proof of payment; (7) whether any of the independent contractors have or have in the past been issued Strong Castle business cards or business cards with a reference to Strong Castle; and (8) whether any of the independent contractors have Strong Castle-issued e-mail accounts.

Strong Castle has employed or currently employs three independent contractors on a 1099 basis: [REDACTED]

Currently, Strong Castle has two independent contractors working on its behalf- [REDACTED]. At the time of its HUBZone application in March 2012, Strong Castle had one independent contractor working on its behalf- [REDACTED].

Set forth below is a discussion of each independent contractor, including responses to the questions posed in your May 8th request.

With regard to [REDACTED] SCI provide the following statement:

Strong Castle engaged [REDACTED] on a 1099 basis from March 2012 through August 2012. Ms. [REDACTED] performed contracts management and bid and proposal support on behalf of Strong Castle. With respect to contracts management support, Ms. [REDACTED] reviewed contracts for contractor teaming arrangements, subcontractors and vendors. With respect to bid and proposal support, Ms. [REDACTED] acted as the point of contact for bid and proposal activities conducted by Strong Castle with respect to potential contract opportunities. Ms. [REDACTED] did not have a signed contract with Strong Castle.

Ms. [REDACTED] performed work on behalf of Strong Castle from her home in Northern Virginia, and represented to Strong Castle that she performed services for another contractor while supporting Strong Castle. Ms. [REDACTED] would e-mail Strong Castle with her hours worked in a specific month at the end of that month. Three-mails reflecting Ms. [REDACTED] hours worked on behalf of Strong Castle are attached as Exhibit 5. Ms. [REDACTED] did not submit a separate invoice for work that she performed. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 6.

Strong Castle did not issue a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail address.

With regard to [REDACTED] SCI provided the following statement:

Strong Castle has engaged [REDACTED] on a 1099 basis since June 2012. Ms. [REDACTED] acts as a subject matter expert for key Strong Castle accounts. Ms. [REDACTED] previously held a high-level position at the Internal Revenue Service, and is familiar with agency systems and operations that are relevant to Strong Castle contracts. Ms. [REDACTED] also acts as a program manager for select Strong Castle contracts. As a program manager, Ms. [REDACTED] is responsible for coordinating task order-level orders with Strong Castle customers, including understanding customer needs and developing the appropriate technical solution. Ms. [REDACTED] also acts as a liaison with Strong Castle customers to ensure the smooth delivery of products and services acquired by agency customers. Ms. [REDACTED] does not have a contract with Strong Castle; however, a copy of her Form W-9 is attached as Exhibit 7. Ms. [REDACTED] has represented to Strong Castle that she performs services for other contractors in addition to Strong Castle.

Ms. [REDACTED] performs work on behalf of Strong Castle from her home office in Ellicott City, Maryland. Ms. [REDACTED] submits a time report on a monthly basis which details the work performed and number of hours performed for that month. Those time reports are attached as Exhibit 8. Those time reports act as

Ms. [REDACTED] invoice for work performed on behalf of Strong Castle. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 9.

Strong Castle has not issued a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail address.

Finally, with Regard to [REDACTED] SCI provided the following statement:

Strong Castle has engaged [REDACTED] on a 1099 basis since October 2012. Ms. [REDACTED] performs contract management services on behalf of Strong Castle by reviewing contracts for contractor teaming arrangements, subcontractors and vendors. Ms. [REDACTED] also acts as the capture manager for Strong Castle's bid and proposal efforts for potential contract opportunities. In addition, Ms. [REDACTED] also manages Strong Castle's General Services Administration Federal Supply Schedule contract. Ms. [REDACTED] has represented to Strong Castle that she performs services for other contractors in addition to Strong Castle.

Strong Castle entered into a consulting agreement with Ms. [REDACTED], a copy of which is attached as Exhibit 10. Ms. [REDACTED] performs work on behalf of Strong Castle from her home office in Pennsylvania. Each month Ms. [REDACTED] submits an invoice for services performed on behalf of Strong Castle during that month. Attached to each invoice is a detailed time report for work performed during that month. A copy of the invoices and time reports submitted by Ms. [REDACTED] is attached as Exhibit 11. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 12.

Strong Castle has not issued a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail account.

Validity of Payroll Records

SBA regulations requires that a firms applying for HUBZone certification, and firms wanting to remain HUBZone certified provide documents and evidence demonstrating that they meet and continue to meet the requirements of the HUBZone program. SBA relies on the accuracy and validity of the records provided in order to establish that a firm has demonstrated its eligibility for the HUBZone program. SBA regulations state the following:

A concern must apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where a concern fails to cooperate with SBA or submit information requested by SBA. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List. 13

C.F.R. § 126.300.

Further SBA has provided the following guidance to firms with regard to payroll records:

What kind of payroll records does SBA need?

You must provide official company payroll records. The SBA will not accept payroll summaries. The payroll must show at a minimum the employee's name, number of hours worked for that pay period, wages, and pay period beginning and end dates. The payroll must cover the date being reviewed (e.g., cover the date you electronically certify that the information in your online application is true and correct). The SBA will assume that all salaried employees work a minimum of 40 hours per pay period, unless the payroll or other records indicate otherwise. For any employees working less than 40 hours in the payroll period submitted at the time of contract award, you must also provide enough prior payrolls to demonstrate that those employees work at least 40 hours in a month's time. <http://www.sba.gov/content/what-kind-payroll-records-does-sba-need>

The record before me shows that SCI did not provide SBA with reliable and accurate payroll records. As noted above, the information and documentation provided by SCI to SBA has not been accurate. Specifically, it was discovered that SCI payroll records showed employees working at the principal office at the same time they were they were taking exams. In response SCI admitted that the records provided were false and inaccurate. SCI confirmed the one instance identified by SBA, and identified another instance of the firm's payroll records showing an employee working hours on a day that the employee did not work. SCI did not discover the false payroll records itself. The corrections were only made after being confronted with the conflicting evidence presented by SBA.

Accurate payroll records are essential in order for a firm to demonstrate its eligibility for the HUBZone program. SBA relies on payroll records to establish eligibility for the 35% HUBZone residency requirement and the principal office requirement. Without accurate records SBA cannot make a determination of who should be considered an employee under SBA's regulations. SBA regulations require SBA to examine how many hours an individual works in order to determine if that individual should be counted as an employee. Further, SBA regulations require that a firm demonstrate that its principal office is located in a HUBZone by providing documents and evidence that the greatest number of employees perform their work at a location in a HUBZone. Accurate payroll records are essential not only for determining who should be treated as an employee but also for determining where and when that employee is performing his/her work.

Without an accurate accounting of how many hours and where an employee works SBA cannot make a reasonable conclusion about a firm's eligibility. In response to SBA's inquiry SCI did confirm the inaccuracy, identified a second erroneous payroll record and fixed both. However, the record demonstrates that SCI did not and does not appear to have adequate internal controls

to verify the accuracy of its records. Specifically, I note that the signed declarations submitted on behalf of 2 employees (whose erroneous entries were included in their December payroll documents) indicate that SCI's employees' work hours were not properly monitored and/or validated by the firm, its owners, and its managers. It indicates that SCI employees can record time worked as they please or as SCI requests adjustments from the employees. This facetious attitude with regard to the accuracy of records may be accepted by SCI and its management; however, this is not an acceptable method to verify and accurately report information necessary for the SBA to make a reasonable conclusion based on the records in question. It is clear to SBA that these employees work times, work locations, and work days were not reasonably monitored and supervised by SCI's managers and/or owners.

In the two instances (the one identified by SBA, and the second identified by SCI) the employees in question work at SCI's purported principal office. Based on the information provided, SCI only had 13 employees at the time in question. An inability to accurately account for 2 out of 13 employees (with those two employees working at the firm's principal office) demonstrates a lack of internal controls that calls in to question the validity of all payroll records submitted to SBA. In order to identify other instances of inaccuracies, SCI had to rely on the testimony of its own employees in order to verify its payroll. These are the same employees who provided the false data in the first place. SCI had no independent method for determining whether its payroll was accurate. The record shows that SCI has no internal controls to ensure that employees purporting to work at its principal office were actually present and working.

SCI's payroll records showed employees working hours they did not work, and at locations they were not working. SCI's response to SBA's inquiry demonstrates that SCI does not have the adequate internal controls to independently verify employee records in order to provide SBA with an accurate payroll. Therefore, I cannot reasonably rely on the payroll records submitted by SCI in making a determination of the firm's eligibility for the HUBZone program.

Totality of the Circumstances

As noted above, SCI has stated that it has utilized three independent contractors. However, regardless of whether a firm labels an individual an independent contractor, SBA must still determine if that individual should be treated as an employee for the purpose of determining a firm's HUBZone eligibility. As explained below, in order to determine whether an individual is an employee, SBA applies the "totality of the circumstances" test.

For purposes of the HUBZone program SBA defines the term "employee" as follows:

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer

organization agreement. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation.

SBA's definition of the term "employee," which explains that "[t]he totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern." 13 C.F.R. § 126.103. That means that SBA will review the totality of circumstances to determine whether three individuals working for SCI are employees for HUBZone program purposes.

The "totality of the circumstances" language first appeared in SBA Size Policy Statement No. 1, published in the Federal Register on February 20, 1986, 51 Fed. Reg. 6099. Size Policy Statement No. 1 gave notice of SBA's "intended application and interpretation of the definition of 'number of employees.'" 51 Fed. Reg. 6099. According to Size Policy Statement No. 1, the intended application of the regulation was to broaden the SBA's authority to find that certain individuals be considered employees of the concern on an "other basis." *Id.* Specifically, the SBA stated its concern that administrative precedent had interpreted the size regulation "in a way which is overly mechanical and has the potential for subjecting the SBA size determinations to abuse. In these cases, the Agency has merely applied the common law indicia of an employee/employer relationship, *i.e.*, who hires, fires, pays and withholds taxes and provides benefits, to determine whether such individuals would be treated as employees of the business or not." *Id.* The SBA further explained that:

The mechanical exclusion of employees retained through an employment contractor from the number of employees counted in determining a business' size status would encourage circumvention of the size standards by means of creative employment practices. Therefore, in order to preserve the integrity of its size regulations, the SBA has determined that in appropriate cases individuals whose services have been procured through an employment contractor should be considered 'individuals employed on . . . [an] other basis,' under [SBA's size regulations] and be counted as part of that business' 'number of employees' even if technically the employees of the contractor under common law principles. To do otherwise would be to permit form to prevail over substance. The Agency will not condone the use of employment practices that allow a business to create the facial appearance of being small under the size standards while at the same time

deriving the usual benefits from the services of individuals in excess of those standards.

Id. at 6100 (emphasis added).

In determining whether a particular concern should be viewed as employing certain individuals on an "other basis," Size Policy Statement No. 1 directs that the SBA "should consider any information or data relevant to the question of whether an employer is deriving the usual benefits incident to employment of such individuals, and the circumstances under which the situation came to exist." Id. The Size Policy Statement again directs the SBA to consider the "totality of the circumstance," including the following eleven factors:

1. Did the company engage and select the employees?
2. Does the company pay the employee's wages and/or withhold employment taxes and/or provide employment benefits?
3. Does the company have the power to dismiss the employees?
4. Does the company have the power to control and supervise the employees' performance of their duties?
5. Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of self-certification as a small business?
6. Did the company dismiss employees from its own payroll and replace them with the employees from any employment contractor involved? Were they replaced soon after their dismissal?
7. Are the individual employees supplied by any employment contractor involved the same individuals that were dismissed by the company?
8. Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house (as opposed to procuring by sub-contract or through an employment contractor)?
9. Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's own employees?
10. Were the employees procured through an employment contractor to do other than fill in for regular employees of the company who are temporarily absent?
11. Does the contract with the independent contractor have a term based on the term of an existing Government contract?

Id. at 6100-6101. The presence of one or more of the factors in a particular case "may but will not necessarily support a finding that the employees should be attributed to the business whose size is an issue." Id. at 6101. The SBA explained that there may be legitimate business reasons in some cases for a company's employment practices and the SBA's policy is not meant to penalize a business from engaging in legitimate business arrangements. Id. The SBA explained

that its regulations were meant to “reach situations where the number of employees is artificially reduced to meet particular size standards for the purpose of becoming eligible for a particular procurement or for receipt of some other SBA program benefit while the firm continues to operate or be capable of operating for all intents and purposes as though it employed a larger number of individuals.” *Id.*

It would make sense that the SBA interprets the “totality of circumstances” language set forth in the size and HUBZone regulations similarly. See *Ben Venue Lab., Inc. v. Novartis Pharmaceutical Corp.*, 10 F. Supp. 2d 446, 457 (D.N.J. 1998) (it would be “illogical, indeed, even potentially dangerous, for the FDA to have contradictory understandings of critical terms . . . within its own regulations”); see also *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995) (the normal rule of statutory construction is that identical words used in different parts of the same act are intended to have the same meaning). Thus, I will look at the SBA’s interpretation of the “totality of circumstances” for size purposes to guide me with the interpretation for HUBZone program purposes.

The SBA utilizes the principles enunciated above concerning the totality of circumstances and the need to review all factors, when determining whether a person should be counted as an employee of a HUBZone SBC. The crux of this totality of circumstances test is to preserve the integrity of the HUBZone program and prevent certain employment practices that circumvent the HUBZone Act and implementing regulations.

In *Size Appeal of Maryland Assemblies, Inc.*, SBA No. 3134 (July 12, 1989), OHA found leased employees to be employees of the challenged concern despite the fact the two companies – the leasing company and the challenged firm – were separate and independent companies. OHA found both companies were involved in a permanent business relationship where Maryland Assemblies essentially had control over the employees, although the leasing company paid their wages. After applying the totality of circumstances, “including how the employee-leasing situation came to exist,” the OHA attributed the employees leased from the leasing company to the challenged concern.

In *Metro Machine*, the court addressed the totality of circumstances test specifically with respect to the HUBZone program. In that case, the SBA had decertified Metro Machine from the HUBZone program after learning that the company transferred 182 non-management employees to a dormant, wholly-owned subsidiary of Metro Machine called Metro On-Call, *Metro Machine Corp. v. SBA*, 305 F.Supp.2d 614, 617 (E.D. Va.), *aff’d*, 102 Fed. Appx. 352 (4th Cir. 2004). In addition to transferring the employees, Metro Machine entered into an agreement with Metro On-Call “guaranteeing that the transferred employees would be available at all times to work on Metro Machines projects. Further, Metro Machine revised a collective bargaining agreement with its union to ensure that employees transferred to [the subsidiary] would not lose any of the rights that they would have had under that agreement.” *Id.* Specifically, Metro Machine ensured

that the transferred employees had the same terms relative to seniority, layoff and recall, discipline, shop assignments and pension payments. *Id.* at 618. The transferred employees performed the same work, in the same location, and under the same supervisors as they did before the transfer. *Id.* at 617. Metro Machine advised the SBA that its subsidiary was being capitalized and organized as a subsidiary to Metro Machine.

Using the totality of circumstances as a guide, the SBA had determined that the employees of Metro On-Call were really employees of Metro Machine. Specifically, the SBA determined:

(1) Metro Machine dismissed employees from its own payroll and replaced them with employees of Metro On-Call immediately after their dismissal; (2) the individual employees supplied by Metro On-Call were the same individuals who were dismissed from Metro Machine; (3) Metro Machine has the power to control and supervise Metro On-Call employees in the performance of their duties; (4) Metro Machine engaged and selected Metro On-Call employees; (5) Metro Machine has the power to dismiss Metro On-Call employees; (6) Metro On-Call employees possess skill and expertise that other companies in the same line of business normally employ in-house; and (7) Metro On-Call employees perform tasks that were formerly performed by Metro Machine employees.

Id. at 619. The court held that the SBA's interpretation of 13 C.F.R. § 126.103, and the use of the totality of circumstances test as a guide, was not erroneous, inconsistent with the HUBZone regulations, nor contrary to clearly established rules. Further, the court ruled that the SBA's decision that Metro On-Call employees should be deemed employees of Metro Machine was not arbitrary or capricious.

In this case SBA, in addition to the employees listed on SCI's payroll, the firm has at various times had individuals not on its payroll performing work for SCI and its affiliate company Strong Castle, LLC.⁵ SCI has classified these individuals as "independent contractors", but it is necessary for SBA to apply the totality of circumstances test to these individuals to determine if they should be considered "employees" for the purposes of HUBZone eligibility.

A. [REDACTED]

In response to SBA's request for information SCI provided the following statement;

⁵ I note that, SCI applied for and was certified by SBA as Signet Computers, Inc. At the time of certification another firm, Strong Castle, LLC. also owned and managed by the managers of Signet Computers, Inc. was in operation. Strong Castle, LLC. applied for HUBZone certification, but was denied certification. Signet Computers, Inc. has since stopped operating under that name, and currently operates as Strong Castle, Inc. The reference here is not to the current Strong Castle, Inc. (SCI) *l/h/a* Signet Computers, Inc., but to the other Strong Castle LLC. that was in operation and was owned and managed by SCI's current owners and managers.

Strong Castle engaged [REDACTED] on a 1099 basis from March 2012 through August 2012. [REDACTED] performed contracts management and bid and proposal support on behalf of Strong Castle. With respect to contracts management support, Ms. [REDACTED] reviewed contracts for contractor teaming arrangements, subcontractors and vendors. With respect to bid and proposal support, Ms. [REDACTED] acted as the point of contact for bid and proposal activities conducted by Strong Castle with respect to potential contract opportunities. Ms. [REDACTED] did not have a signed contract with Strong Castle.

Ms. [REDACTED] performed work on behalf of Strong Castle from her home in Northern Virginia, and represented to Strong Castle that she performed services for another contractor while supporting Strong Castle. Ms. [REDACTED] would e-mail Strong Castle with her hours worked in a specific month at the end of that month. Three-mails reflecting Ms. [REDACTED] hours worked on behalf of Strong Castle are attached as Exhibit 5. Ms. [REDACTED] did not submit a separate invoice for work that she performed. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 6.

Strong Castle did not issue a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail address

In the case of this individual, after reviewing the information submitted I have determined that, based on the totality of the circumstances test, the individual should be treated as an employee of SCI. Based on the information that was provided; it appears that individual was engaged and selected by the management of Signet. She also performed work for SCI's management on behalf of its affiliate Strong Castle, LLC. The work that she performed is work that is normally performed by employees of a firm, and not a subcontractor. Specifically contract and vendor management is not something that is normally handled by subcontractors. She also acted as the point of contact for Government contract opportunities, something that is normally handled in-house. Further, she was given an email account by the firm from which to conduct business on behalf of the firm. It is not clear from SCI's response whether outside parties, and in particular the Federal Government (for which she was the point of contact) was informed that Ms. [REDACTED] was not in fact an employee of the firm, and that they were communicating with a subcontractor and not SCI. It appears from the document and evidence provided, that SCI was treating Ms. [REDACTED] as an employee, giving her work to perform that would normally be performed by employees, supervising her work as if she was an employee, and that outside observers (especially the Federal Government and vendors for who she was the company's point of contact) would treat her as an employee of the firm they were attempting to communicate with. Ms. [REDACTED] also performed this work for SCI without a contract. She would perform tasks at the request of Signet's management and would be paid in hourly increments for work completed.

Therefore, after reviewing all of the information provided and apply the totality of the circumstances test, I have concluded that for the purpose of determining HUBZone eligibility Ms. [REDACTED] is considered and employee of SCI.

B. [REDACTED]

In response to SBA's request for information SCI provided the following statement;

Strong Castle has engaged [REDACTED] on a 1099 basis since June 2012. Ms. [REDACTED] acts as a subject matter expert for key Strong Castle accounts. Ms. [REDACTED] previously held a high-level position at the Internal Revenue Service, and is familiar with agency systems and operations that are relevant to Strong Castle contracts. Ms. [REDACTED] also acts as a program manager for select Strong Castle contracts. As a program manager, Ms. [REDACTED] is responsible for coordinating task order-level orders with Strong Castle customers, including understanding customer needs and developing the appropriate technical solution. Ms. [REDACTED] also acts as a liaison with Strong Castle customers to ensure the smooth delivery of products and services acquired by agency customers. Ms. [REDACTED] does not have a contract with Strong Castle; however, a copy of her Form W-9 is attached as Exhibit 7. Ms. [REDACTED] has represented to Strong Castle that she performs services for other contractors in addition to Strong Castle.

Ms. [REDACTED] performs work on behalf of Strong Castle from her home office in Ellicott City, Maryland. Ms. [REDACTED] submits a time report on a monthly basis which details the work performed and number of hours performed for that month. Those time reports are attached as Exhibit 8. Those time reports act as Ms. [REDACTED] invoice for work performed on behalf of Strong Castle. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 9.

Strong Castle has not issued a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail address.

Further, in addition to information provided by SCI, SBA has also reviewed SCI's proposal in response to U.S. Internal Revenue Service (IRS) Personal Computer Equipment and Accessories RFQ TIRNO-12-Q-00083. With regard to Ms. [REDACTED]'s role, the proposal stated the following:

Signet's Management Team has extensive background with the IRS and will use this corporate knowledge to effectively manage the IRS PC and Accessories contract. Our proposed Program Manager, [REDACTED], possesses broad IRS experience in IT leadership project/program management, IT infrastructure management, application development and deployment, data center operations, and strategy and planning. She has direct experience with all phases of the Enterprise Lifecycle (ECL), including engineering, design, development, test,

deployment and operations. Ms. [REDACTED] is experienced and certified in ITILv3 Foundations, has three Senior Executive Services (SES) appointments at the IRS: 1) Director, IT Infrastructure Division, 2) Director, Large Systems and Storage Infrastructure Division, and 3) Director, Filing and Payment Compliance Division. Serving as PM, Ms. [REDACTED] will provide direct project management of the program, ensure quality processes, provide reports and ensure the IRS has access to all information on products, orders, tracking and invoicing. Ms. [REDACTED] will have the support of the Signet executive leadership, Braulio Castillo, and [REDACTED] who also have broad experience with the IRS.

In this case, SCI is attempting to claim that one of its key employees and its program manager for a major Government contract is not an employee at all. The description of the work performed by Ms. [REDACTED] describes an individual that is selected by SCI, supervised by SCI, can be dismissed by SCI, and almost exclusively performs tasks that would regularly be performed by employees of the firm. Further, SCI's proposal to the IRS is very specific about its use of subcontractors, who they are, and what functions they will be performing. In contrast to this specificity; the proposal in no place states that SCI's proposed project manager is a subcontractor. In fact, the proposal is pretty clear that Ms. [REDACTED] is part of "Signet's Management Team" and not a subcontractor. In this case, it appears that SCI is telling the Government two different stories. To the IRS Ms. [REDACTED] is a valued and key member of "Signet's Management Team" and its proposed Program Manager, and to SBA she is merely an independent contractor. In SBA's view, a firm's "Management Team" and its Program Manager are not roles that are normally subcontracted out to third parties.

As with Ms. [REDACTED], Ms. [REDACTED] also performed all her work for SCI without a contract. She would perform tasks at the request of SCI's management and would be paid in hourly increments for work completed. Further, as of October 2012, Ms. [REDACTED] would report and keep track of her hours on SCI's timekeeping system, just as all other SCI employees would⁶.

Therefore, after reviewing all of the information provided, I have concluded that for the purpose of determining HUBZone eligibility Ms. [REDACTED] is considered and employee of SCI.

C. [REDACTED]

In response to SBA's request for information SCI provided the following statement;

Strong Castle has engaged [REDACTED] on a 1099 basis since October 2012. Ms. [REDACTED] performs contract management services on behalf of Strong Castle by reviewing contracts for contractor teaming arrangements, subcontractors and vendors. Ms. [REDACTED] also acts as the capture manager for Strong Castle's bid

⁶ The documents provided also show that once Ms. [REDACTED] began using SCI's timekeeping she would also report to SCI her leave, just as any other employee.

and proposal efforts for potential contract opportunities. In addition, Ms. [REDACTED] also manages Strong Castle's General Services Administration Federal Supply Schedule contract. Ms. [REDACTED] has represented to Strong Castle that she performs services for other contractors in addition to Strong Castle.

Strong Castle entered into a consulting agreement with Ms. [REDACTED] a copy of which is attached as Exhibit 10. Ms. [REDACTED] performs work on behalf of Strong Castle from her home office in Pennsylvania. Each month Ms. [REDACTED] submits an invoice for services performed on behalf of Strong Castle during that month. Attached to each invoice is a detailed time report for work performed during that month. A copy of the invoices and time reports submitted by Ms. [REDACTED] is attached as Exhibit 11. Proof of payment to Ms. [REDACTED] by Strong Castle is attached as Exhibit 12.

Strong Castle has not issued a business card to Ms. [REDACTED]. As noted in your e-mail, Strong Castle did issue Ms. [REDACTED] a Strong Castle e-mail account.

Unlike Ms. [REDACTED] and Ms. [REDACTED], Ms. [REDACTED] did have a contract with SCI. However, the "totality of the circumstances" test requires SBA to review all aspects of the relationship. And in this case, after reviewing the information and applying the "totality of the circumstances" test I have concluded that Ms. [REDACTED] should also be treated as an employee for the purpose of determining the firm's HUBZone eligibility.

Based on the information provided, Ms. [REDACTED] is managing large areas of the firm's business. Her role seems to be similar to the role of Ms. [REDACTED] and she begins to perform this work for SCI after the employment of Ms. [REDACTED] ends in October of 2012. She performs contract management. She manages the firm's teaming arrangement, subcontracts, and relationships with vendors. She is also the firm's "capture manager." Further, she is responsible for managing the firm's GSA schedule contract. These are all significant duties, with significant responsibilities. Further, as with Ms. [REDACTED] and Ms. [REDACTED], SCI has not provided SBA with any information indicating that it was disclosed to outside parties, and especially to the Federal Government, that Ms. [REDACTED] was not a SCI employee, and that they were in fact communicating with a subcontractor of SCI and not with SCI directly. In reviewing this relationship as with the other two, it is the totality of circumstances of the party's relationship that requires Ms. [REDACTED] to be treated as an employee. She is performing work at the behest of SCI's management, and she is managing large and important aspects of SCI's business that would normally be managed by an employee of the firm.

35 % Requirement

The HUBZone Act and the implementing regulations require that at least 35% of the HUBZone small business concern's (SBC's) employees reside in a HUBZone. 15 U.S.C. § 632(p)(5)(A)(i)(I)(aa); 13 C.F.R. § 126.200(b). SBA's HUBZone regulations define the term

employee as follows:

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive deferred compensation or no compensation, including no in-kind compensation, for work performed) are not considered employees. However, if an individual has an ownership interest in and works for the HUBZone SBC a minimum of 40 hours per month, that owner is considered an employee regardless of whether or not the individual receives compensation.

13 C.F.R. § 126.103.

A firm must provide SBA with documents and evidence demonstrating that it meets all of the requirements of the HUBZone program. SBA relies on the veracity and accuracy of the records provided by the firm in order reach reasonable conclusions about the firm's eligibility. As explained above, SBA cannot reasonably rely on the payroll records submitted by SCI. Without payroll records I cannot conclude that 35% of SCI's employees reside in a HUBZone. Therefore, SCI has failed to demonstrate that it meets this requirement.

I also note that even if SBA accepted SCI's payroll records, the firm would still fail to meet the 35% requirement.

As noted above, the requirement that 35% a firm's employee must reside in a HUBZone is an ongoing requirement that firms are expected to continue satisfying while participating in the program. SBA asked SCI for records and evidence that at least 35% of its employees resided in a HUBZone on the date that it was awarded a contract from the IRS for Solicitation No. TIRNO-12-Q-00083 (12/07/12). According to SCI's payroll records and other documents provided, SCI had thirteen employees who were working on the date of at issue, 12/7/2012, and that worked at least 40 hours during the month leading up to and including the date of award⁷. At least five of SCI's employees must have resided in a HUBZone ($13 * 35\% = 4.29$ rounded up to 5)⁸ to meet

⁷ SCI's timekeeping records for Ms. [REDACTED] show that between November 7, 2012 and December 7, 2012 she worked 87 hours. Ms. [REDACTED] billed SCI for a total of 40 hours in the month of November 2012. Therefore after applying the totality of the circumstances test as explained, I have included these two in the employee count for determining if SCI meets the 35% percent employee requirement.

⁸ The SBA's regulations provide that: "When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number." 13 C.F.R. § 126.200(b)(4).

the 35% HUBZone residency requirement. According to documentation provided, 4 of SCI's thirteen employees resided in a qualified HUBZone at time. Therefore, SCI did not satisfy the 35% residency requirement at time.

HUBZone Principal Office Requirement

The Small Business Act and implementing regulations require that, with the exception of certain specified entities, qualified HUBZone small business concerns have a principal office located in a HUBZone. 15 U.S.C. § 632(p)(5)(A)(i)(I)(aa); 13 C.F.R. § 126.103. The statute and regulations define a HUBZone to mean an area located within one or more qualified census tracts, qualified non-metropolitan counties, lands within the external boundaries of an Indian reservation, redesignated areas, or base closure areas. *Id.* § 632(p)(1); 13 C.F.R. § 126.103. The statute defines a qualified census tracts as having "the meaning given that term in section 42(d)(5)(C)(ii) of Title 26." *Id.* § 632(p)(4)(A). The statute referenced, the Internal Revenue Code of 1987 ("IRC"),⁹ defines a qualified census tract as follows:

(ii) Qualified census tract.--

(I) In general.--The term 'qualified census tract' means any census tract which is designated by the Secretary of Housing and Urban Development [HUD] and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts or which has a poverty rate of at least 25 percent.

(II) Limit on MSA's designated.--The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas.--For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

As noted above, a business concern must have its principal office located in one of these HUBZones in order to qualify for the program. SBA's regulations define the term "principal office" as follows:

Principal office means the location where the greatest number of the concern's

⁹ The IRC defines a "qualified census tract" for the purpose of determining Low-Income Housing Tax Credits (LIHTC). The LIHTC is a tax incentive "intended to increase the availability of low income housing." 60 Fed. Reg. 21246 (1995). The LIHTC provides "a tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects." *Id.* The amount of the tax credit is adjusted, in part, for buildings located in designated qualified census tracts. *Id.*

employees at any one location perform their work. However, for those concerns whose 'primary industry' (see 13 CFR 121.201) is service or construction (13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job site locations to fulfill specific contract obligations.

13 C.F.R. § 126.103. Because SCI's primary industry is represented by NAICS code 541519, "Other Computer Related Services," the determination of its principal office excludes all of SCI's employees who perform the greatest amount of their work fulfilling specific contract obligations. I note that with respect to the definition of principal office, the SBA recognizes in its regulations that qualified HUBZone SBCs may have more than one office, including "offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC." Id. § 126.207. However, in order to qualify for the program, the concern's principal office must be located in a HUBZone. Id.

A firm must provide SBA with documents and evidence demonstrating that it meets all of the requirements of the HUBZone program. SBA relies on the veracity and accuracy of the records provided by the firm in order reach reasonable conclusions about the firm's eligibility. As explained above, SBA cannot reasonably rely on the payroll records submitted by SCI. Without payroll records I cannot conclude that the greatest number of SCI's employees perform their work at an office located in a HUBZone. Therefore, SCI has failed to demonstrate that its principal office is located in a HUBZone.

Small Business Regulatory Enforcement Fairness Act

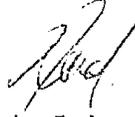
If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

Thank you for your cooperation with this matter. If you have any questions, please contact hubzone@sba.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Pardo', written in a cursive style.

Mariana Pardo
Director
HUBZone Program