

HELPING SMALL BUSINESSES COMPETE:  
CHALLENGES AND OPPORTUNITIES IN THE  
FEDERAL PROCUREMENT MARKETPLACE

---

HEARING  
BEFORE THE  
SUBCOMMITTEE ON CONTRACTING AND  
INFRASTRUCTURE  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

HEARING HELD  
JULY 16, 2019



Small Business Committee Document Number 116-034  
Available via the GPO Website: [www.govinfo.gov](http://www.govinfo.gov)

U.S. GOVERNMENT PUBLISHING OFFICE

37-029

WASHINGTON : 2019

HOUSE COMMITTEE ON SMALL BUSINESS

NYDIA VELÁZQUEZ, New York, *Chairwoman*  
ABBY FINKENAUER, Iowa  
JARED GOLDEN, Maine  
ANDY KIM, New Jersey  
JASON CROW, Colorado  
SHARICE DAVIDS, Kansas  
JUDY CHU, California  
MARC VEASEY, Texas  
DWIGHT EVANS, Pennsylvania  
BRAD SCHNEIDER, Illinois  
ADRIANO ESPAILLAT, New York  
ANTONIO DELGADO, New York  
CHRISSY HOULAHAN, Pennsylvania  
ANGIE CRAIG, Minnesota  
STEVE CHABOT, Ohio, *Ranking Member*  
AUMUA AMATA COLEMAN RADEWAGEN, American Samoa, *Vice Ranking Member*  
TRENT KELLY, Mississippi  
TROY BALDERSON, Ohio  
KEVIN HERN, Oklahoma  
JIM HAGEDORN, Minnesota  
PETE STAUBER, Minnesota  
TIM BURCHETT, Tennessee  
ROSS SPANO, Florida  
JOHN JOYCE, Pennsylvania  
  
ADAM MINEHARDT, *Majority Staff Director*  
MELISSA JUNG, *Majority Deputy Staff Director and Chief Counsel*  
KEVIN FITZPATRICK, *Staff Director*

# CONTENTS

## OPENING STATEMENTS

Hon. Jared Golden .....	Page 1
Hon. Pete Stauber .....	2

## WITNESSES

Ms. Belinda Guadarrama, Founder & CEO, GC Micro, Petaluma, CA, testi- fying on behalf of GovEvolve .....	5
Mr. Bruce Lansdowne, President & CEO, Trinity Technology Partners, Green- belt, MD, testifying on behalf of the Montgomery County Chamber of Com- merce .....	7
Mr. Thomas J. DePace, CTS, C.O.O. & Sr. Engineering Manager, Advance Sound Company, Farmingdale, NY, testifying on behalf of NECA .....	8
Ms. Dorothy Ann Callahan, Principal, D. Callahan, LLC, Olney, MD .....	10

## APPENDIX

Prepared Statements:	
Ms. Belinda Guadarrama, Founder & CEO, GC Micro, Petaluma, CA, testifying on behalf of GovEvolve .....	21
Mr. Bruce Lansdowne, President & CEO, Trinity Technology Partners, Greenbelt, MD, testifying on behalf of the Montgomery County Cham- ber of Commerce .....	31
Mr. Thomas J. DePace, CTS, C.O.O. & Sr. Engineering Manager, Ad- vance Sound Company, Farmingdale, NY, testifying on behalf of NECA .....	40
Ms. Dorothy Ann Callahan, Principal, D. Callahan, LLC, Olney, MD .....	46
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
EA Engineering, Science, and Technology, Inc., PBC .....	51
ECR - Employee-owned Contractor Roundable .....	54
HUBZone Contractors National Council .....	59
WIPP—Women Impacting Public Policy .....	74



## **HELPING SMALL BUSINESSES COMPETE: CHALLENGES AND OPPORTUNITIES IN THE FEDERAL PROCUREMENT MARKETPLACE**

**TUESDAY, JULY 16, 2019**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Jared Golden [chairman of the Subcommittee] presiding.

Present: Representatives Golden, Veasey, Chu, Balderson, Hagedorn, and Stauber.

Chairman GOLDEN. Good morning, folks. The Committee will come to order.

I am going to start right off this morning by saying that I woke up bright and early this morning and hopped on some radio shows back home, and Ranking Member Pete Stauber came up as an example and someone said, sheesh, you know, do you enjoy working with any of your Republican colleagues? I said, well, sure, this is an easy one. Pete Stauber from Minnesota is a great guy. But the last time I was late to Committee he text me and said that I owed him a beer for like every minute I was late. So I would say we are even now. Oh, boy.

So I want to thank everyone for joining us this morning, and I especially thank the witnesses for being here and thank you for your patience.

Supporting small businesses can take on many forms from making sure they have affordable access to capital, something we talk about a lot here, to making sure our Nation has an up-to-date infrastructure, to meeting the technology and transportation needs of small businesses. Another way that we support small businesses is to simplify and expand opportunities to do business with the United States Government. The Federal Government is the largest procurer of goods and services in the world, spending nearly \$442 billion in fiscal year 2017, for example.

Over the years, Congress has recognized the positive impact that Federal contracting has on increasing small business development and growth when it established a minimum for a Federal contract set-aside of 23 percent. As a subset of this overall goal, agencies aim to maximize participation of small businesses in the Federal marketplace for certain deserving demographics.

The Small Business Act sets the goal of awarding 5 percent of all eligible prime contracting and subcontracting dollars to small, disadvantaged businesses and women-owned businesses, and 3 percent for HUBZone and service-disabled veteran-owned businesses.

Last year, the Federal Government awarded \$120 billion. That is about 25 percent of all eligible prime contracting dollars to small businesses and met goals for the small disadvantaged businesses, small disabled, veteran-owned businesses, respectively, as well. And this is certainly a move in the right direction. The prime contracting goals for HUBZone, small businesses, and women-owned small businesses, however, were not met.

While it is true that small businesses received more dollars this year than in years past, dollars to large businesses are actually increasing at a faster pace and the disparity is quite large. And unfortunately, a closer look at the numbers reveals that most of the eligible contracting dollars were given to just a few very large companies in the country, which is not an acceptable outcome. I think that this point is important because we all know that everywhere we go in the country, small businesses are the largest job creators and providers out there. And that is particularly true in districts like the Ranking Member and my own, which are very, very rural. So I think it is important that we stay focused on using taxpayer dollars, Federal contracting opportunities to the benefit of small businesses.

As the Chair of the Subcommittee on Contracting and Infrastructure, I am committed to furthering small business interests and improving our small businesses contracting framework to ensure that small businesses around the country can compete and thrive, and that is precisely the purpose of our hearing today, to listen to some of the challenges that small businesses face in the Federal marketplace and potential solutions we can look to as policymakers to address them.

As part of today's hearing, we will hear directly from small contractors about how certain section 809 proposals that use words like "streamline" and "efficiency" can sometimes be code words that could potentially eliminate most small business set-asides for Defense Department acquisitions. These recommendations would replace the longstanding 23 percent set aside with a miniscule 5 percent small business preference.

The Subcommittee also wants to hear how we can improve the Small Business Act to remove barriers for entry, increase the use of subcontractors, and make sure that small firms are paid in a timely manner when providing quality goods and services to Federal Government. That is something I hear about repeatedly back home from people contracting with the government is timeliness of payment is a barrier to participation.

With that, I want to thank all the witnesses for their attendance, and I look forward to your testimony. I would now like to yield to the Ranking Member, Mr. Stauber, for an opening statement.

Mr. STAUBER. Thank you, Chairman Golden.

You know, the Federal Government has long stood by the policy that government should aid, counsel, assist, and protect the interests of small businesses' concerns in order to maintain the strength and overall economy of our Nation. One of the primary tenets of

the Small Business Act is in recognizing the use of small business contractors as in the interest of maintaining or mobilizing the Nation's full productive capacity in the interest of war or national defense programs. To this end, it is my privilege and honor to sit on this Subcommittee to ensure that the people's will is met and to provide a platform for small contractors to freely voice their issues and concerns.

One of the issues that raises the most alarm bells are the small business contracting and subcontracting. Subcontracting is vitally important to the health and vitality of a small business, particularly those that are new to the Federal marketplace. Subcontracting opportunities are most often the first and best way for a new small business to engage with the Federal customer and small firms structure their entire business model entirely around obtaining subcontracts.

Therefore, it is imperative that maximum effort is made to ensure subcontracting opportunities are plentiful and fair. Like the Federal Government, large contractors are required to develop subcontracting plans and meet goals for partnering with small businesses.

Unfortunately, as we have seen previously in this Committee, agencies are not doing enough to ensure large primes are following through on meeting their subcontracting plans and the rules themselves surrounding subcontracting plans might be part of the problem.

I look forward to hearing more about the issues surrounding subcontracting plans and ways we might be able to hold large contractors accountable.

Another concern brought to this Committee's attention are some of the recommendations made by the section 809 panel, a group established by Congress to address issues with the way the Department of Defense buys what it needs. One of the recommendations raising red flags among the small business community is the proposal to replace the small business set aside requirement for certain contracts with a 5 percent price preference. The set-aside requirement is critically important in that it provides a protocol—correction, a protected pool in which small and new vendors can compete, develop, and grow, eventually to compete for larger acquisitions against bigger companies. Thus, it is important that we maintain the special requirement in the interest of having robust competition and ensuring a healthy defense industrial base.

There are other troubling recommendations coming from the panel's report, such as eliminating the multiple form protest ability and restricting the SBA's "once 8(a), always 8(a)" rule. I hope to learn more from our witnesses about what impact these recommendations might have on small businesses serving in the defense marketplace.

Lastly, one of the industries in which small businesses make up a majority is construction. The Federal Government depends on small construction companies. Whether they are primes, subcontractors, or suppliers, every government builder, VA hospital, and other structure important to the functioning of our government needs these small construction firms to succeed, so we need to make sure their concerns are heard and addressed.

Obtaining and maintain steady cash flow is one of those issues particularly important to a small construction contractor, and I hope to learn more about this and other issues from our witnesses today.

Thank you all for your testimonies and thank you, Mr. Chair, and I yield back.

Chairman GOLDEN. Thank you, Mr. Stauber. The gentleman yields back.

For Committee members that have opening statements that they prepared, they can submit those for the record.

I would like to just take a few minutes to explain the timing rules for those of you testifying. You may have been through this before but just in case. Each witness gets 5 minutes to testify and each member gets 5 minutes for questioning. There is a lighting system in front of you that will assist you. The green light will be on when you begin, the yellow light tells you you have got a minute to go, and the red light will come on when you are out of time. Just do your best to try to stay within that time limit.

I would now like to introduce our witnesses.

Our first witness is Ms. Belinda Guadarrama, the founder and CEO of GC Micro, a leading supplier of computer hardware, software products, and integrated systems to the defense and aerospace industries, Federal agencies, and Fortune 1000 companies. She is Co-Chair of the GovEvolve advocacy organization and has served as Chair of the NASA Minority Business Resource Advisory Committee and is a member of the Department of Energy Task Force on Small Business Development. Among her many accomplishments, she received a National Minority Female Entrepreneur of the Year Award from the U.S. Chamber of Commerce and the Latino Entrepreneur of the Year by the Latino Business Association. Welcome, Ms. Guadarrama.

Our second witness is Mr. Bruce Lansdowne, the president and chief executive officer of Trinity Technology Partners, Inc., a small business that participates in the 8(a) program. Mr. Lansdowne is a business and program management executive with more than 20 years of leadership experience and has served as an executive advisor to the Air Force leadership. He serves on the board of directors for the Montgomery County Chamber of Commerce and Donations from the Heart, Inc., a faith-based, nonprofit organization developed to serve both individuals and families by providing assistance and resources for those in need. Welcome, Mr. Lansdowne.

Our third witness today is Mr. Thomas DePace. Mr. DePace is the CEO and senior engineering manager of Advance Sound Company, a small business dedicated to audiovisual and security installations. In this role, he has expanded the core competencies of Advanced Sound Company from audiovisual systems to include network infrastructure, lighting control and automation, as well as access control and intellectual property security systems. In 2010, Thomas was a 30 under 30 Young Professionals Award recipient from the Huntington Chamber of Commerce, and in 2015, he was recognized as a commercial integrator 40 under 40 Award recipient. I got a 40 under 40 back home in Maine as well. Welcome, Mr. DePace.



And I would now like to go ahead and yield to our Ranking Member, Mr. Stauber, to introduce our final witness.

Mr. STAUBER. Thank you, Mr. Chairman.

And our final witness is Ms. Dorothy Callahan. She has been a small business advocate for the past 30 years and has extensive experience in acquisition, contract management, and supplier diversity, supporting both the private sector and our Federal Government. Ms. Callahan is a seasoned veteran in managing multiple subcontractors and partners for large and mid-scale procurements and has a long history working with the Federal acquisition regulation, defense acquisition regulation, SBA size standards and regulations, and a variety of other Federal, state, and local procurement regulations. Ms. Callahan worked for the National Government Services Business Development organization from 2011 to 2019 as the small business and strategic partnering director, and in that role she developed and enabled small business utilization strategies for the business development capture and program teams. She also worked diligently to identify small business partners for NGS. Prior to that, Ms. Callahan was the small business liaison officer for IBM's U.S. Federal Global Business Services Division. In her time with IBM, which spanned over 25 years, she was involved in contracts, administration, management, sourcing, strategy, subcontracts, management, and bid and proposal support. Ms. Callahan is an active member of many government and nongovernment procurement organizations, having attended as a guest speaker or panelist for several small business events. She clearly brings us a wide depth and breadth of experience, and I look forward to hearing your testimony. Ms. Callahan, welcome.

Mr. Chair, I yield back.

Chairman GOLDEN. And now we will go ahead and move ahead to our witness testimony.

Ms. Guadarrama, you are now recognized for 5 minutes.

**STATEMENTS OF BELINDA GUADARRAMA, FOUNDER & CEO, GC MICRO; BRUCE LANSDOWNE, PRESIDENT & CEO, TRINITY TECHNOLOGY PARTNERS; THOMAS J. DEPACE, CTS, C.O.O. & SR. ENGINEERING MANAGER, ADVANCE SOUND COMPANY; DOROTHY ANN CALLAHAN, PRINCIPAL, D. CALLAHAN, LLC**

#### **STATEMENT OF BELINDA GUADARRAMA**

Ms. GUADARRAMA. Chairman Golden, Ranking Member Stauber, and members of the Subcommittee, I would like to thank you for the opportunity to testify today. My name is Belinda Guadarrama, and I am the founder and CEO of GC Micro Corporation, a minority-woman-owned information technology business located in Petaluma, California.

I am testifying on behalf of GovEvolve, a group of small and midsize ITVARs, firms that enhance the value of third-party products and play a vital role in the IT industry, providing software, hardware, and networking products that provide value beyond just order fulfillment.

GovEvolve members represent WOSB and EDWOSBs, HUBZone certified, 8(a), service-disabled veterans, small and midsize businesses.

I founded GC Micro in 1986, and my vision extended far beyond my desire for personal success. I envisioned a company where my staff is not just employees but they are my business partners. This community-minded philosophy has been the undercurrent of my leadership since GC Micro's founding. My experience in government, including as a White House Small Business Policy Advisor, allowed me to see firsthand the importance of having effective small business policies that promote growth and innovation in our Nation's industrial base.

I would like to highlight some of the challenges faced by small and midsize companies in the Federal marketplace, as well as provide opportunities for change in acquisition policy for ITVARS, and the entire small business community at large.

First, as this Committee is well aware, the Section 809 Panel recommended eliminating small business set-asides in exchange for a 5 percent price preference at the Department of Defense.

Small businesses have everything to lose with this change. We strongly encourage the Committee to support the more than 51,000 small business contractors that service DOD's mission by preserving the contracting programs that fulfill the Nation's policies of ensuring a health industrial base.

Second, as government contractors become larger, a small business has to decide whether to grow to compete with large companies, sell the business, or stay small to avoid the difficulties of competing in a full and open environment. While the Small Business Runway Extension Act made an important change for revenue-based size standards, we urge the Committee to adopt a 3-year average for employee-based NAICS codes to give these small businesses much-needed time to transition into full and open competition.

Third, size standards play an important part in government contracting, defining eligibility for small business programs.

There is not an NCIS code specific to IT resale or to ITVAR functions. Product provided under ITVARS are listed as a subindustry or exception in Footnote 18 under NAICS code 541519. To alleviate this confusion, GovEvolve is recommending the creation of separate ITVAR/IT NAICS code maintaining the 150-employee size standard.

Fourth, as government buying continues its trend toward large vehicles, it is increasingly challenging for small businesses to win sole-source awards. GovEvolve supports H.R. 90, which eliminates option years for sole-source contracts.

We also urge you to consider increasing the sole-source threshold to 8 million and 10 million as expected to be proposed in the Senate. Equally important is streamlining and simplifying rules for awarding these contracts. We recommend the Committee remove the requirement that a contracting officer must show they do not have a reasonable expectation that offers would be received from two or more small business concerns.

Fifth, the goal of the FAR Council is to assist in the direction and coordination of government-wide procurement policy and regulatory activities. But discrepancies between the SBA and the FAR create headaches for businesses and the acquisition workforce. We

strongly recommend adding the SBA to the FAR Council to mitigate these issues and give small businesses a stronger voice.

Finally, GovEvolve understands the role of subcontracting as an entry port for small businesses to enter the Federal marketplace and build past performance. GovEvolve encourages the Committee to look at incentives that would spur subcontracting plan compliance and small business utilization.

In conclusion, ITVAR companies like mine have unique challenges outlined in this testimony. We urge the Committee to take bold steps to strengthen small business programs and fully integrate these programs into the government's buying strategies.

Thank you for this opportunity to testify today, and I am happy to answer any questions.

Chairman GOLDEN. Thank you very much, ma'am.

And Mr. Lansdowne, you are recognized for 5 minutes.

#### **STATEMENT OF BRUCE LANSDOWNE**

Mr. LANSDOWNE. Good morning, Chair Golden, Ranking Member Stauber, and members of the Subcommittee. My name is Bruce Lansdowne. I am president and CEO of Trinity Technology Partners. My company develops and offers information technology services and solutions, and we are located in Greenbelt, Maryland.

I am here today to testify on behalf of the Montgomery County Chamber of Commerce (MCCC), of which I am a board member. MCCC is a 500-member organization located in Montgomery County that works to move the needle on policies that positively impact small and midsize businesses in the Federal marketplace. Thank you for inviting me here today on this very important segment of our economy.

Trinity is a small business currently providing support to the Federal marketplace. However, after I started the business it was challenging to obtain opportunities to participate in the Federal space. I was fortunate enough to use a professional relationship that I had previously established with a large company in order to gain access to the Federal market as a subcontractor.

We took this opportunity very seriously and as a result, we began to receive many accolades from the government customer. Despite our successes though, as subcontractor and providing our capabilities, it was still a 5-year journey to receive a prime contract with that particular agency.

This story is not just unique to my company; it highlights the time and effort put in by small businesses to compete in the Federal space. However, I took each challenge as an opportunity to make things better, not just for my company but for the government customers and all midsize, small government contractors. It is with this passion for success that I joined the chamber's board of directors.

The chamber has been at the forefront of finding solutions to tackle problems in the Federal marketspace that exist around subcontracting. As background, an important part of the chamber is GovConNet Council, which is comprised of industry procurement experts and practitioners. The council meets monthly to discuss Federal contracting issues that affect small and midsize firms. Large companies are also an important part of the chamber and

membership, and they support efforts to assist small and midsize companies to obtain success in Federal contracting.

Last year, the GovConNet Council identified an issue that continues to be problematic for small and prime contractors alike, subcontracting. The council then decided to convene four stakeholder roundtables with industry, including large prime contractors and small subcontractors and government officials to identify pain points in subcontracting for all sides of the equation. We enlisted the help of Bloomberg Government to identify what data exists on subcontracting, its accuracy, and its purpose. According to Bloomberg, prime spending on contracts requiring subcontracts is surging. Prime contracts requiring a subcontract plan now total \$302 billion, which is 54 percent of all fiscal year 2018 spending. Further, more, our prime contract spending on these contracts has grown 73 percent since fiscal year 2014, a huge uptick that indicated we are on the right track. Through those roundtables, the council identified recommendations that are a result of extensive discussions and consultations with members and policymakers. Our goal is to improve accountability and transparency in subcontracting for small businesses.

The chamber makes the following recommendations:

One, empower the Office of Small and Disadvantaged Business Utilization (OSDBU) to monitor and improve subcontracting compliance.

Maintain and enhance data collected through the Federal Subcontracting Reporting System (FSRS).

Require the SBA to report subcontracting dollars on their annual scorecard, not just percentages.

Four, direct GAO to conduct a study of subcontracting authority, processes, systems, and the reporting of subcontracting performance against established goals.

And lastly, improve utilization of small business subcontracting through programs through expansion of sole-source authority.

In conclusion, we would like to thank this Subcommittee for its continued efforts to improve Federal contracting access for small and midsize businesses. The chamber will continue to work with this Committee to strengthen the role of these businesses in the Federal marketplace.

This concludes my testimony, and I am happy to answer any questions that you may have. Thank you.

Chairman GOLDEN. Thank you very much, sir.

Mr. DePace, you are now recognized for 5 minutes.

#### **STATEMENT OF THOMAS J. DEPACE**

Mr. DEPACE. Thank you, Chairman Golden, Ranking Member Stauber, and members of the Subcommittee, for inviting me to testify today. On behalf of the National Electrical Contractors Association (NECA), we greatly appreciate the opportunity to submit a statement for the record to the Subcommittee on Contracting and Infrastructure. The Subcommittee should be commended for holding this important hearing to better understand the issues facing contractors in the Federal marketplace and the ways in which simple solutions can bring about great change for their small businesses.

My name is Thomas DePace, and I am the chief operating officer of Advance Sound Company in Farmingdale, New York. My mother and father bought this company in 1988 and have worked for over 3 decades to transform our family-owned business into an industry leader. Partnering with over 80 manufacturers in the industry, Advance Sound Company has become a premier distributor and integrator of quality audiovisual equipment and solutions.

After joining the company in 2007, I have worked to expand the core competencies of Advanced Sound for audiovisual systems to include network infrastructure, lighting control and automation, as well as access control and IP security systems. We have adapted our company to be ready for the ever-changing technology landscape.

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

Risk is inherent when competing in the Federal marketplace, and although the Federal marketplace is notorious for limiting it, that key to success is cash flow. With that said, there are three concepts related to cash flow that I believe this Committee has the ability to alter for the better.

Two years ago, NECA contractor, Mr. Greg Long of Long Electric, testified before the House Small Business Committee describing one of the biggest issues facing our contractors: the prompt payment and proper administration of change orders. Mr. Long's commentary, along with the hard work of this Committee, led to the passage of the Change Order Transparency for Federal Contractors Act, H.R. 4754, which requires Federal agencies to list their practices on the payments of change orders and their history for doing so. While this legislation allowed for the protection of contractors on the front end by increasing awareness, the crux of the problem remained unaddressed, that being the need for prompt payment on these changes.

Thankfully, through the leadership of Representatives Stauber and Veasey, this Committee has recognized the issues and understands that requiring partial payment for unilaterally requested change orders is a major step towards alleviating the unnecessary risks of many small construction contractors assume as doing the cost of business with the Federal Government. H.R. 2344, the Small Business Payment for Performance Act is a common-sense solution requiring the Federal Government to recognize that their delayed payments have real world consequences for America's small businesses.

Secondly, on construction industry contracts, the Federal Government has the ability to hold up to 10 percent of the contract price until satisfactory completion of the work. This process is known as retainage, and was originally intended to assure the prompt com-

pletion of work. While not all Federal contracts require the use of retainage, this practice has caused many subcontractors to be weary of working with the Federal Government. Retainage sums are often passed down inevitably laying upon subcontractors to cover the cost. Because of this, many states have either done away with retainage on their projects or have lowered their overall percentage.

One immediate way to mitigate the degree of financial exposure from retainage is for the Federal Government to follow the states and lower the overall rate. This would put more liquidated funds in the pockets of America's small businesses, and likely decrease the overall cost of Federal construction projects.

Lastly, as methods for delivering larger infrastructure projects continue to develop and become more complex, surety bonding must remain an underlining assurance for contractors. The Federal Government for decades has provided protections not only for itself but for the small businesses and their workers who interact with it through the use of bonding. With the increased use of public-private partnerships (P3s) on Federal property, the need to reform the 1934 Miller Act to unambiguously cover these types of contracts is apparent.

In conclusion, as a contractor, who has worked on numerous construction projects, I am extremely encouraged by this Committee's efforts.

Thank you again for this opportunity. NECA and Advance Sound applaud the Committee's unwavering support of small business.

Chairman GOLDEN. Thank you, sir.

And lastly, Ms. Callahan, we will recognize you for 5 minutes.

#### **STATEMENT OF DOROTHY ANN CALLAHAN**

Ms. CALLAHAN. Chair Golden, Ranking Member Stauber, and members of the Subcommittee, my name is Dorothy Callahan, and I am the president of D. Callahan, LLC, as well as a member of the Montgomery County Chamber of Commerce's GovConNet Council. Thank you for inviting me to testify today.

A little background on why I am testifying on this topic. I have spent my career working at large prime contractors as a small business program manager and strategic partnerships director. In these roles, I have been responsible for many aspects of successfully working with small businesses. This includes fostering strategic relationships with internal program deal teams and potential partners, mentoring small businesses for success in the public sector, and identifying partnerships to fill key capability gaps while ensuring customer and mission success, just to name a few. I have also worked with small businesses at trade shows and other conferences to promote and identify teaming partners during my tenure at these large firms.

My past positions give me a unique perspective, understanding the needs and challenges of both prime and small business contractors in the Federal marketplace. Based on my experience, I would like to make recommendations to the Committee about changes that could be made to allow small business contractors to be more successful in the acquisition landscape.

One of my many roles was to plan, organize, and coordinate the small business program, as well as make recommendations for input to the corporate strategic approach that would maximize corporate resources to enhance program efficiency and effectiveness. I also assisted our small business liaison office, subcontract and program directors, with the facilitation of small business goals and accomplishments. Therefore, I spent many years facilitating and managing subcontracting plans, which includes being an advocate for our teaming partners internally. This gave me unparalleled insight into issues with these plans faced by both primes and small businesses. One of the changes that I believe would improve subcontracting for small businesses is to require the identification of small businesses listed in subcontracting plans. If the prime wins the contract with a small business listed on their team, that business should be utilized. This change would allow contracting officers to more successfully evaluate a prime's progress on meeting their subcontracting plan goals.

Another role I had was coordinating and managing all corporate activities during the Federal compliance reviews by supporting audits by the Defense Contract Management Agency (DCAA) resulting in the achievement of an "exceptional" rating for my company. An annual past performance evaluation is required for primes, as well as interim evaluations at least every 12 months throughout the entire period of performance on the contract. Since this annual evaluation is already required, I recommend it include an assessment of the prime's subcontracting plan. This additional component of the evaluation would achieve two effects: allow oversight by contracting officers without additional burden and provide an opportunity for prime contractors to discuss their progress on meeting subcontracting goals.

When a prime contractor sets a subcontracting goal, they are required to show a "good faith effort" to meet it. The definition of this effort is ambiguous and can be interpreted loosely, much to the detriment of small businesses. Not all, but some large companies take advantage of this unspecified term, which leads to more of "checking the box" instead of working towards meeting the goals in their subcontracting plans. This broad definition does not hold primes accountable for utilizing small businesses. Therefore, I support the Committee's proposal that the good-faith standard should be removed and instead, primes should be assessed on a pass/fail basis. However, it is important that in this change, the "fail" rating is explicitly defined to avoid any confusion or ambiguity if a prime were to receive this rating. Primes should also have the ability in this new system to resolve this issue with the contracting officer, since there are instances where meeting the goals is not possible.

In my role as the central liaison with the Office of Small and Disadvantaged Business Utilization offices, I have seen their effectiveness firsthand. OSDBUs are incredible resources within agencies that advocate for small business contractors. They should be empowered to be utilized as an additional resource to contracting officers to assist in subcontracting plan compliance and remediation.

In summary, I have dedicated my career to developing strong relationships with businesses in all socioeconomic categories to assist in strategic preparation for pursuit of opportunities and partner-

ships within the Federal market. I believe the meaningful policy changes outlined in this testimony will lead to increased utilization of small businesses in the Federal marketplace.

Thank you for the opportunity to speak with you today. This concludes my testimony, and I am happy to answer any questions.

Chairman GOLDEN. Thank you very much, ma'am.

We are now going to go to member questions. With that, I would recognize myself for the first 5 minutes. And I am going to start with Ms. Guadarrama.

You talked a little bit about 809 Panel recommendations and you suggested that we should look into a sense of Congress rejecting that panel's recommendations. As far as we know, there has not been a legislative effort under way to implement these proposals. And so what is it about the 809 Panel proposals that are so concerning to the small business community that would require the Committee to look into addressing this preemptively through an action on the House floor?

Ms. GUADARRAMA. Well, my concern is the mere thought that the 809 Panel is going to be making a recommendation that could have such a far-reaching effect on small businesses. The SBA just recently came out with 6 years of hitting the small business goal. And if you have a program that for the last 6 years has hit the goal, it does not make any sense to look at it now and say, let's see how we can change the program. If you look at HUBZone that is set up with a 10 percent preference, that goal is never reached. So you have a program in place where the goal is being reached, and then you have a recommendation from the 809 Panel saying let's move it into the type of program that HUBZone currently has where it is not being reached. It makes absolutely no sense. And if anything, I think it would be extremely devastating for the small business community who has for years now specifically been working under small business set-asides.

Chairman GOLDEN. Thank you, ma'am, very much.

You also talked about making some changes similar to what was done with the Runway Extension Act, and I want to point out that through work we did on this Subcommittee, a bill just yesterday passed the House floor that was sponsored by the Ranking Member here to try and make the SBA follow through with the changes of the Runway Extension Act. And I am sure we are going to be able to get that done. So thanks for that, Pete, and congrats on getting that through the house.

You have talked about following through with changes that are not based upon just the receipts but rather the size of the employee-base standard. Could you talk a little bit about why you think we should look into looking at the average employees of the preceding years as a change that might be helpful?

Ms. GUADARRAMA. I think for the same reason that the changes were made on the revenue-based side of it, I think when you are looking at small businesses, as they get close to the point where they are going to be outgrowing the small business size standard, for any small business the idea that they could have a little bit extra time to actually get ready to make that shift from small to other than small, a 3-year averaging would be very beneficial for them. It would give them a little more time to actually



see what they needed to do, whether it is increasing staff, changing the business model somewhat, and a 3-year averaging I think would be enough time for the small business to become more viable under full and open competition and at the same time it is not a long enough time period that it would be detrimental to the small businesses that are still within the program.

Chairman GOLDEN. Thank you. So a bit of an incentive to grow while also protecting jobs.

Ms. GUADARRAMA. Yes.

Chairman GOLDEN. All right. Thank you.

Just moving on with what time I have left, Mr. Lansdowne, I wanted to talk a little bit about subcontracting plans. You talked about putting on the scorecard for SBA, about the subcontracting dollars on their annual scorecard. Why do you think that is a meaningful change since they are already reporting percentages? What is it about reporting the actual amount of dollars that you think would be important?

Mr. LANSDOWNE. Sure. I brought a copy of the report, actually, the scorecard.

When you look at those percentages, you sometimes have trouble putting it in relativity as to percentages of what. And the chamber recommended that we show the actual dollars so it can be more real for the subcontractors, for the general public who has access to those scorecards. So it just would make it more clear as to really how many dollars are being spent in the subcontracting arena.

Chairman GOLDEN. Okay. And very quickly just moving on, this is something that came up in Full Committee last week. And Ms. Callahan spoke about it, too. So I am going to ask this question and then my time will be expired. But if you would take your time to answer it.

You talked about in your testimony how you worked with a prime contractor to be a part of their bidding process. They win the bid and then you do not get the opportunity to work on the contract itself. I think this is a big problem and I have heard it is one that happens frequently. So could you talk more about your recommendation to empower the OSDBUs to monitor subcontracting compliance in order to help with this issue?

Mr. LANSDOWNE. Absolutely. When that happened to my company I picked up the phone and called the small business director as a subcontractor. It did not have a lot of weight because I was not a government person to talk gov to gov with the small business director. She mentioned that she would write policy and that would not help us. It was too late at that time. You know, it was all over with. So empowering the OSDBU to be an advocate for the small business to work alongside the contracting officer because as I have heard across with my colleagues, they are overburdened with work. They are trying to get the contracts awarded, et cetera, et cetera. So having them alongside to help with compliance, to help with remediation of activities that go on with the small subcontractors that are having trouble being recognized and utilized on the prime contracts.

Chairman GOLDEN. Thank you for that response. I imagine you put some time into helping develop your portion of that bid and lost out on the man-hours put in.

Mr. LANSDOWNE. It was very disappointing.

Chairman GOLDEN. Yeah, it is disappointing. Big loss.

I am out of time by over a minute, so I apologize for that.

And I would go ahead and recognize the Ranking Member, Mr. Stauber, for 5 minutes.

Mr. STAUBER. Thank you, Mr. Chair.

Mr. DePace, you said something that I wrote down and it resonates with me being a small business owner for almost 30 years. And it was that delayed payments have real world consequences for small businesses. That is a statement that government should understand, that we cannot allow this to be put on the backs of our small businesses, so thank you for that.

Ms. Callahan, you have a ton of experience, and I am looking forward to you answering some of the questions here.

What are some of the reasons, justified or not, that a prime might not use a small subcontractor they worked with in submitting the proposal?

Ms. CALLAHAN. So it could be that when the award has been made, if something should change within that award then the skillsets or the capabilities that that company initially brought to the proposal may not now fit into that change order within the actual contract award.

Mr. STAUBER. Due to like a change order?

Ms. CALLAHAN. It could be; right. So that would be one reason that one would not be utilized.

Mr. STAUBER. From your experience, is that the most common?

Ms. CALLAHAN. Especially at an IDIQ level, and then you have task orders underneath it. When you build your team for an IDIQ, you are building it on the requirements of that solicitation. But then there are specific work orders, task orders that might come out. And not every company is going to fit each task order. So that could warrant——

Mr. STAUBER. Sure. In your experience, how do primes define good faith?

Ms. CALLAHAN. What I have seen is kind of how many outreach events have I attended, how many companies have I talked to, instead of really looking at what efforts have you taken to kind of bring that team on, maybe to mentor them, to help them along to build their capabilities.

Mr. STAUBER. Mr. Lansdowne, you had talked about the ability to work with the prime and ultimately not getting the contract. Can you tell us the financial burden that put on your company? What was the cost for that?

Mr. LANSDOWNE. It was a little while ago but we were really, truly a startup. And those dollars were very important to our corporation. So as a small corporation it was a couple million dollars impact.

Mr. STAUBER. I cannot imagine that, having the ability to put forth the effort and then losing it like that.

So I think the goal for us is we have the witnesses here. Your experience is valuable in how we proceed with our legislation. But from this member's standpoint, there is nothing more important than protecting and serving our small businesses across this Nation and giving them the opportunity to be awarded contracts as

a prime and/or a subcontractor. And so the goal is to make sure that you are represented and you all bring a wealth of experience to us. So from our standpoint, I want to say thank you for your testimony. I wrote a lot of notes here. The whole goal is to make sure that our small businesses, which the four of you know are the engine of our economy. The engine of our economy has to be protected and you are going to bring that experience and help us legislate in the best way we can as we go forward.

So I want to thank you all for your testimony and shared experiences. Thank you.

And I yield back, Mr. Chair.

Chairman GOLDEN. The gentleman yields back.

And we will now recognize Congressman Troy Balderson. He is the Ranking Member of the Subcommittee on Innovation and Workforce Development.

Mr. BALDERSON. Thank you, Mr. Chairman. And good morning to everyone on the panel.

My question is for response from the whole panel, each of you advocated for the importance of supporting small businesses, and these businesses when they are working as or with the Federal contractor. The Federal acquisition regulations are the principal set of rules governing the government's purchasing process. The system was created to ensure uniform policies and procedures for acquisition. And addition, FAR was set in place to determine whether or not the prime contractor made a good-faith effort to meet its subcontracting goals. How would each of you alter FAR so that small businesses could better benefit from partnering with the Federal Government? From the whole panel, please.

Ms. GUADARRAMA. If I could address that. I think both Mr. Lansdowne and Ms. Callahan brought up very serious concerns about the fact that you have small businesses that are initially included with subcontracting plans and in the end they are not actually used with it. I think the proposal that Ms. Callahan came up with, which was to include when you are looking at evaluation, whether or not they have actually hit the goals that are out there. Good-faith effort, I think you can probably have 200 different small businesses in here and we will all say yes, we have all had the benefit of being part of a good-faith effort. We have gone to the trade fairs. We have met with the individuals. That generally has very little to do with actually having an opportunity to work with the prime. So if something were actually in place to gauge in terms of the dollars that they are working with, it would make much more sense than simply looking at if they have made a good-faith effort.

In addition to that, what Mr. Lansdowne had also spoken about in terms of being included initially with it, in my case, I was working with a contractor who was bidding at a NASA location. I had a very good reputation out there. They asked me to go out there and help them actually make the presentation which I did. Then once they did receive the contract they decided that there was another company that could probably do it at a lower price point than I could work with. I think that happens very routinely to lots of small businesses. And again, if there were a way to monitor the individuals that were actually included, the companies included on the small business plan originally when it is submitted, and then

actually see what is the progress that is being made in working with those specific companies, it would make a huge difference.

Ms. CALLAHAN. I would like to just add to that because the subcontracting plan is part of your contract, resilient contract. And I think often it is overlooked in the CPARs, which is the Contractor Performance Assessment Report. There is an item that asks about small business subcontracting. So if you really want to kind of put some teeth into this, make sure that looking at the subcontracting plan, I think today these contracting officers may not—I am not going to say they are not, some may be, others are not—looking at that subcontracting plan and its compliance to the subcontracting plan.

Mr. DEPACE. I think like we have all said, you know, being able to work on countless projects. We have all spent thousands and thousands of dollars bidding on projects. Maybe my company does 100 projects a year and we bid on 5,000 to 6,000. Being named as a subcontractor from the start would be an advantage that would give us an opportunity to work with these things. Making sure that those commitments are met. We have all gone to various large contractors' meetings. We have been invited on projects and then all of a sudden somebody comes in and said I have done this here or I can do this here and it really limits our ability locally to support local labor. It limits our ability to continue to grow in the marketplace. And somebody is just taking the scope and the specification documents that we have pined over for a long period of time and just put a number to it. And it is quite disheartening sometimes.

Mr. LANSLOWNE. And lastly, I would agree with all my colleagues here. Being recognized, specifically by company name, is very, very important. Instead of checking a box for 8(a) or checking a box for one of the socioeconomic programs would be very, very helpful. One of the experiences that we had was after the award of the contract we were then asked for a best and final offer after the government award. And to your point, there is no way you can—what do you say? Who do you say it to? As a subcontractor, you do not exist pretty much in the eyes of the government because the actual—contractually, it is with the prime contractor. So to put some teeth in the act to list the contractor by name, back to empowering the OSDDBU to be able to not take over the contracting officer role but certainly work alongside because they are overburdened. I will say it again. They probably applaud here to hear me say that today. To help them to monitor and to empower them to take action when these things are not being met.

Mr. BALDERSON. Thank you all very much.

Chairman GOLDEN. The gentleman yields back.

And I am going to do a second round of questions. I know that Mr. Stauber would like to as well.

Ms. Guadarrama, I want to ask you, you were just describing, let's throw out some hypothetical numbers that might be small but maybe people can wrap their minds around easily. If you as a subcontractor help in a bid and maybe said you can do some work for \$100,000 and then the prime uses those figures to put out like a million dollar bid and wins the contract and then they turn around and go with another subcontractor who says they will do the work

for \$50,000, does that save taxpayers \$50,000 or is that just added profit for the prime?

Ms. GUADARRAMA. I think it is just added profit for the prime. The dollar amount that was in the contract is still in the contract for the full amount.

Chairman GOLDEN. It is locked in. Yeah.

Ms. GUADARRAMA. And if anything, the taxpayer is probably being shortchanged on the type of value that the original company that was added into the contract, the experience that they could bring, they are probably losing that.

Chairman GOLDEN. Thank you. Probably a naive question. I just wanted to get that one on the record.

Mr. DePace, I wanted to ask you a little bit. You were talking about the construction contracts and retainage. This sounds to me like some construction workers or even just other small subcontracting businesses sometimes being asked to work essentially for nothing and that their retainage itself is greater than they might actually get out of the work at the end of the day. Is that correct?

Mr. DEPACE. Yeah, definitely. I mean, there are a lot of facets to that question. I mean, prompt payment is truly important, and by the time you are in the construction process and get a requisition through and it is approved, and if the Federal Government is taking 150 days to pay, by the time that cycle starts we are almost 6 months into the process. Retainage is even worse than that. Sometimes as in infrastructure or a preliminary contractor we could be working on large transportation projects where we are performing the work within the first 6 months of the period and substantial completion or satisfactory completion of the work is not done for 36 months. So that 5 or 10 percent is held for that extended period of time.

Chairman GOLDEN. It is hard to make payment, too, probably.

Mr. DEPACE. Yeah, I mean, it all trickles down, especially being union workforce, we have to pay health and benefits. We have a \$50,000 a week salary that we need to constantly meet. We have manufacturers that we need to pay and, you know, we have net 30 terms with them. It does not matter when we get paid, so it causes all of us to have, you know, large general operating accounts. And small businesses that do not understand that practice while working in the Federal Government do seem to fail because they do not understand the cash flow negativity.

Chairman GOLDEN. Well, thank you for that, for taking care of your workers.

Mr. Lansdowne, I wanted to ask you a question here. You have made us aware that the Montgomery County Chamber of Commerce has a program called the Veteran Institute for Procurement. Can you tell us a little bit about the program and the benefit it provides?

Mr. LANSDOWNE. Sure. It is a program for free. And yes, I say it is free. The expense for the actual participants on the service-disabled veteran-owned and veteran-owned small businesses, the only cost is the travel to and from there. There are three platforms by which they can get involved to get started, to grow, even to do business outside of the United States, both Federal and commercial. This offers for them the benefit of collaborating because in

small business, you feel like sometimes you are on an island by yourself. So it provides other business owners with that venue. It helps them with processes, internally to strengthen those processes such as HR, accounting, all those kinds of things to help them move along. So through that program, which is a 3-day, 27-hour program certificate for the participants at the C-level, principal level, ownership level of those corporations. So it creates a great venue. Over 1,300 companies have graduated from the program, and it has caused some great results.

Chairman GOLDEN. It sounds like a very worthy program. Thank you for that.

I think I am going to go ahead and turn it over to the others who have questions. But I did want to note, you know, Mr. DePace, on the issue of prompt payment, you made some reference to this. I know that a couple of our Committee members here, including the Ranking Member, have done some good work on the National Defense Authorization Act that we just passed out of the House last week, so I am sure maybe he would like the opportunity to talk with you a little bit about that as well.

Mr. STAUBER. Thank you, Mr. Chair.

I am sitting here and listening to Mr. Lansdowne, you talk about after a prime has been awarded the contract they come to the small business subcontractor and ask for their last best offer. I cannot imagine that. To me, it does not make sense. And as Ms. Guadarrama talked about, they have a subcontractor that is awarded the bid with the prime and then they ask for the last best or bring another contractor in there, assuming they are going to be cheaper. And as you stated, ma'am, it is not. The contractor, the prime still gets that. And I just, only from looking at this situation from outside this city, it is outrageous. And so for me, like I said, cash flow, Mr. DePace, as you talked about small businesses, that is part of keeping them sustainable. And for the Federal Government to not pay you for 150 days, and sometimes even longer because you missed checking a box or what have you, that is outrageous.

It is such a privilege for me to serve, to hear this because we need to bring this back to Main Street America. Fundamentally, it does not smell, does not look right for small businesses. And I will tell you what. For me, we know we need changes, and I would ask that, and the Ranking Member and I are going to get together on this and make some changes. And you know, the changes that we make do not have to take 5 or 10 years. This needs to be as immediate as possible to sustain our small businesses, to make sure, Mr. DePace, that your business stays intact paying your employees a good wage. That is fundamentally important that we do that. And I am convinced that the Chair is with me on this and we are going to look at taking some of your testimony and changing it because I do not like to have to wait for the pace of government. Because if you get outside this city, the pace of government is too slow. Let's use it as the pace of small business, everyday men and women in small business. That is what I want to do with you, Mr. Chair, to be able to take this and make a change to benefit and ensure that our small businesses remain a vital part of contracting. Thank you.

Chairman GOLDEN. Amen to that. I am with you.

Rep. Balderson, did you want to ask any more questions?

Mr. BALDERSON. Sure. Thank you, Mr. Chairman.

Ms. Callahan, this would be directed to you.

In your experience working with large prime contractors, do you think primes will support the solutions identified today, specifically eliminating the good-faith standard?

Ms. CALLAHAN. I think that if they are good players in this they should have no issue with that. It is the bad players that will raise the flag, raise the issues. But I think in good players, not a problem.

Mr. BALDERSON. Okay. And Mr. DePace, my question for you is there a reason why the Miller Act currently does not extend to the public-private partnership or P3s?

Mr. DEPACE. It is just very unambiguous in terms of surety bonding. And just like the question you asked Ms. Callahan, surety bonding really is a process that allows us to have a lowest responsible bidder, and I think all of us here at this table, you know, fight the fact of something called, you know, lowest bidder. By ensuring that P3s are surety bonded, it would allow a higher level of responsibility on those processes. And we want to take that ambiguity out of the Miller Act.

Mr. BALDERSON. Thank you.

I yield back my remaining time, Mr. Chairman.

Chairman GOLDEN. Thank you very much.

I also wanted to ask, Ms. Callahan, you know, I think it is clear the Ranking Member is worked up about this. I think it is very unfortunate that this is happening with the issue of subcontractors sometimes getting cut out. This came out, like I said, earlier in a Full Committee hearing just last week. But you did kind of talk a little bit about the issue of like a change package coming out. What are some of the best practices on the front end that we might also look at, let's say, in terms of good contracting, you know, practice at SBA or other Federal agencies to try and make sure that those change packages do not have to occur as frequently? I mean, there must be a way to try and do this so there is more certainty for a prime so that they are not put into that position. If you do not have any recommendations, do not worry about it, but—

Ms. CALLAHAN. You know, in thinking about your question, when you are a large prime contractor, you are building a team of small businesses. And it is part of your response and the solicitation. And having the teaming agreements to really articulate what you are expecting from the partner. And then that company should be put in your subcontracting plan. You identify that company and the value they are bringing to the team. Because they are helping you win because they are bringing a special skill niche to that team, filling in the gaps. So I think that is an area that we really become focused. And who are those teaming partners, looking at those solicitations and ensuring that there is compliance?

Chairman GOLDEN. That is perfect. I mean, I think I just gave you an opportunity to talk a little bit about what the government can do on the front end but I think you kind of went right to saying it is on the prime and that we should be ensuring that subcontractors that work hard to be a part of the bid get an opportunity to be a part of the work crew. All right. I think we all agree on that.

Do you have any more questions?

Mr. STAUBER. I will just reiterate, thanks for sharing your expertise today and I will reiterate this, that the Ranking Member and I have heard loud and clear from your experience on what we can do, and again, the pace of government is not allowed with the Ranking Member here. So, the Chair and the Ranking Member. So I appreciate your time and your talents and keep up the good work.

Chairman GOLDEN. With that I want to thank all the witnesses for taking time out of your schedules to be with us today and sharing your thoughts.

We know here that small businesses across the country provide quality performance, efficiency, and are constantly creating new products and services. That is why American taxpayers benefit when the Federal Government works and does business with small firms.

And I want to thank the witnesses for their testimony. Your suggestions are going to help us develop policies that will make it easier, not harder, for small businesses to get the contracting opportunities that we want them to, and I look forward to working with Congressman Stauber on that.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the Committee, we are adjourned. Thank you all very much.

[Whereupon, at 11:10 a.m., the subcommittee was adjourned.]



**A P P E N D I X**



Testimony of

Belinda Guadarrama

GC Micro Corporation  
Petaluma, CA

On Behalf of  
GovEvolve

Before the  
House Committee on Small Business  
Subcommittee on Contracting and Infrastructure

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

July 16, 2019

Chair Golden, Ranking Member Stauber, and Members of the Subcommittee, I would like to thank you for the opportunity to testify today. My name is Belinda Guadarrama and I am the founder and CEO of GC Micro Corporation, a minority-woman-owned information technology business located in Petaluma, California. I am testifying today on behalf of GovEvolve, a leading advocacy organization for small and midsize businesses that support government innovation.

GovEvolve works to support the technology industry by promoting public policies that encourage innovation and competitiveness. As a voice for these diverse businesses, the goal of GovEvolve is to help ensure that the government has access to the most modern technology. GovEvolve is made up of many IT Value Added Resellers, or ITVARs. Value-added resellers are firms that enhance the value of third-party products by adding customized products or services for resale to end users. These small businesses play a vital role in the IT industry, providing software, hardware and networking products that provide value beyond just order fulfillment. The enhanced value can take a number of forms, including creating an application for a particular hardware platform and selling the combination as a turnkey solution. In addition to IT solutions, many ITVARs also offer professional services as their key value-add. For example, an ITVAR may provide consulting, design, implementation and training services around the hardware, software and networking components it resells. ITVARs represent a significant and important distribution channel for IT manufacturers. While the reseller is not the manufacturer of the equipment, the company is expected to have a thorough knowledge of the product to properly customize, install, test and maintain for the customer.

I founded GC Micro in 1986 and my vision extended far beyond my desire for personal success. I envisioned a company where my staff is not just employees—they are business partners. This community-minded philosophy has been the undercurrent of my leadership since GC Micro's founding. We embody the essence of American entrepreneurship by combining a comprehensive list of computer hardware, software, custom configuration and integration services with superior value and award-winning

commitment to total customer satisfaction. My experience in government, including as a White House Small Business Policy Advisor, allowed me to see first-hand the importance of having effective small business policies that promote growth and innovation in our nation's industrial base.

Four years after I started the company, GC Micro was admitted into the SBA's 8(a) program. The 8(a) program is a beneficial program for a small business interested in working with the Federal government. We were in the program for 7 years. During that time, we were awarded our first sole source contracts with the Department of Energy and NASA. The training and experience that GC Micro received under that program was instrumental to our continuing success. After graduating from the program, we continue competing under small business set-asides. In 2014, we competed for the NASA SEWP V contract and are one of the successful contract holders under this GWAC.

Today I would like to highlight some of the challenges faced by small and midsize companies in the federal marketplace, as well as provide opportunities for change in acquisition policy for ITVARS, and the whole small business community.

#### 809 Panel Recommendation to Eliminate Small Business Set-Asides

As this Committee is well aware, the Section 809 Panel is an independent commission Congress created to modernize and streamline the Defense acquisition system. While the Commission was tasked with a complex and comprehensive mission, it was a shock to the small business community that the Panel recommended eliminating small business set-asides in exchange for a 5% price preference at the Department of Defense (DoD).

Small businesses have everything to lose with this change. We strongly disagree with the Panel's rationale for proposing this change on page 32 of Volume 3; "Set-asides and other small business programs incent small businesses to make extraordinary efforts to remain small. Setting-aside all procurements under a certain dollar threshold does not

encourage a small business to grow beyond that threshold, especially if that business relies on competing for procurements that are currently set aside for small business. Outgrowing the size standard makes those businesses ineligible to compete for the same contracts that, in many cases, were critical to the success of the small business. Using a price preference and requiring DoD to continue to meet the overarching small business use goal established by SBA will ensure the same amount of DoD dollars are invested in small business, while allowing capable small businesses to grow and compete for opportunities.”<sup>1</sup>

Recommendation 80 proposes “goods that are readily available,” could be purchased on a fixed price basis up to \$15 million, or higher with senior official approval, via direct solicitations or price quotes. As a result, contracting officials would not be required to publicly advertise their requirements and would not have to set-aside those requirements for small businesses. Under this recommendation, small businesses would not even have access to the federal contracting marketplace. In reality, the recommendation seeks to limit competition to companies already providing goods to the federal government, rather than widen the vendor base by including small businesses.

Since small business set-aside programs are the life blood of small business contractors, this proposal by the Panel does not require a lengthy explanation or rebuttal. Simply stated, this recommendation is an attempt to gut the small business preferences as required under the Small Business Act. According to the SBA, the government has exceeded the 23% goal for the sixth year in a row. Does this sound like a program that doesn't work and needs to be changed? Absolutely not. A 5% price preference will not provide sufficient incentives for agencies to continue awarding contracts to small businesses. For example, the Small Business Administration (SBA) small business set-aside HUBZone Program affords a 10% price preference, however, the government has never met its 3% goal of awarding contracts to HUBZone firms. Therefore, it is reasonable to assume that a 5% price preference would have the same unsatisfactory outcome.

---

<sup>1</sup> David A. Drabkin, et. al., *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations*, 3 Sec. 809 Panel, 32 (2019).

The Committee should express a Sense of Congress that rejects any attempt to approve DoD's adoption of this recommendation. We strongly encourage the Committee to support the more than 51,000 small business contractors who support the DoD's mission. We ask you to preserve the contracting programs that seek to give small businesses access to federal contracts while fulfilling the stated nation's policy of ensuring a healthy industrial base.

#### Employee-Based NAICS Codes

Another challenge for small businesses like mine is exceeding the SBA's size standard too quickly. As government contracts become larger, a small business has to decide whether to grow beyond the small business programs to compete with very large companies, sell the business or stay small to avoid the difficulties of competing in a "full and open" environment. The "Small Business Runway Extension Act," signed into law in December 2018, requires SBA to allow companies to use a five-year lookback for the purpose of size determination for revenue-based size standards, instead of the current three years. This law gives companies that are growing out of their small size status a little more flexibility. However, this change was only made for revenue-based NAICS codes, not employee-based NAICS codes. We urge the Committee to adopt a three-year average for employee-based NAICS for the purposes of size determination.

Currently, acquisitions for ITVARs are made under the 541519 NAICS code, which has a size standard of 150 employees. Just like with revenue-based NAICS codes, a sizeable contract under an employee-based NAICS code can bump the company out of their size standard because the current determination of size is based on a twelve-month average.

Small business programs are designed to ensure supplier diversity in the federal marketplace, to spur innovation and to guard against supplier consolidation and noncompetitive pricing. Government contractors experience a unique pattern in their

growth since it can be unpredictable, sometimes hovering in the single digits and then experiencing extreme growth over two or three years. This pattern of sudden growth is increasingly common due to the government's more frequent use of large indefinite delivery, indefinite quantity (IDIQ) contract vehicles, under which contractors can be awarded very large task orders.

The rationale behind the change for revenue-based NAICS can be stated simply: competitiveness takes time to build. The same rationale applies to goods and services procured under employee-based codes. Larger small businesses that are about to graduate from the small business market need time to recruit talented employees, develop their intellectual property and build infrastructure to compete at the next level. Therefore, changing from a 12-month employee average to a three-year average, would give firms more time to adjust to the full-and-open marketplace. Large businesses would also benefit because it increases the pool of well-qualified subcontractors. Therefore, GovEvolve recommends adopting a three-year average for employee-based NAICS for the purposes of size determination.

#### ITVAR NAICS Code

An issue faced specifically by small business value-added resellers is that there is not a NAICS code specific to IT Resale/ITVAR functions. Products provided under Information Technology Value Added Resellers (ITVAR) are listed as sub-industry or "exception" in Footnote 18 under SBA's table of size standards under North American Industry Classification System (NAICS) 541519 (Other Computer Related Services). Under this exception, ITVARs have a 150-employee size standard. Size standards play an important part in government contracting, defining eligibility for small business programs.

While there are other NAICS codes for wholesale, resale, or distribution of various goods other than IT – ITVARs fall under the NAICS 541519. This code is a better fit for services and causes confusion for agencies attempting to use ITVARs. In fact, 541519

has a stipulation that 51% of work performed under this NAICS code needs to have services or value add services tied to it. In Footnote 18 to SBA's table of size standards<sup>2</sup>, it states that for a federal contract to be classified under the ITVAR exception 150-employee size standard, it must consist of at least 15 percent, but not more than 50 percent of value-added services. If the contract consists of less than 15 percent of value-added services, it must be classified under the appropriate manufacturing industry. If the contract consists of more than 50 percent of value-added services, it must be classified under the NAICS industry that best describes the principal nature of service being procured.

To determine eligibility for federal small business assistance, SBA establishes small business size definitions, referred to as "size standards," for private sector industries in the United States. In evaluating an industry's size standard, SBA generally examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry.<sup>3</sup>

To alleviate this confusion, GovEvolve is recommending the creation of an ITVAR IT NAICS code maintaining the 150-employee size standard. By creating an ITVAR IT NAICS code, contracting officers would be using an accurate and appropriate NAICS code resulting in more procurements and less confusion in procuring these much-needed items from small businesses.

---

<sup>2</sup> U.S. SMALL BUS. ADMIN., *Table of Size Standards*, (last updated 2017), <https://www.sba.gov/document/support--table-size-standards>.

<sup>3</sup> 13 C.F.R. § 121 (2016).

#### Sole Source Contract Opportunities

Government acquisition practices that maximize the ability of small businesses to compete are beneficial to the entire federal marketplace. As government buying continues to trend towards large vehicles, it is increasingly challenging for small companies to win sole source awards. GovEvolve supports H.R. 190, "Expanding Contracting Opportunities for Small Businesses Act of 2019," which eliminates option years for sole source contracts. While we recognize that this bill is not providing parity among all of these programs, it is positive step forward. We urge you to consider increasing the sole source awards to \$8 million/\$10 million (manufacturing) as expected to be proposed in the Senate. Increasing the award amounts for sole source contracts is necessary if the small business contracting community is expected to compete in the current environment of larger contracts.

However, it is equally as important to streamline and simplify rules for awarding these contracts. Creating parity among SBA socioeconomic contracting programs for sole source contracts would incentivize agencies to increase their awards to all programs. A current hindrance to awarding sole source contracts is the requirement that a contracting officer must show that they do not have a reasonable expectation that offers would be received from two or more WOSB/SDVOSB/HUBZone small business concerns. There is confusion around the language "reasonable expectation," which leaves this interpretation up to each contracting officer. This interpretation could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase sole source awards to small businesses and foster the success of these companies.

#### Adding SBA to the FAR Council

The government implemented the Federal Acquisition Regulations (FAR) in 1984, looking to create a single, governmentwide procurement regulation. The process of changing a law or putting in place a new one is lengthy. The FAR Council uses the same



process as any other agency to amend the FAR, which includes: the publication of a proposed rule in the Federal Register; the opportunity for interested persons to submit comments on the proposed rule; publication of a final rule that includes a "concise general statement" of the "basis and purpose" of the rule; and a 30-day waiting period after the final rule is published in the Federal Register before the rule can take effect. Other agencies get involved in this process as well, such as a review from the Office of Management and Budget (OMB) or the Office of Information and Regulatory Affairs (OIRA), for example. Then, finally, it goes to the FAR Council for adoption.

It is easy to see why small business input can get lost in this process. The goal of the FAR Council is to assist in the direction and coordination of government-wide procurement policy and government-wide procurement regulatory activities in the federal government. Current Council Members include the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space and the Administrator of General Services. While these individuals have deep knowledge of federal acquisition, the voice of small business is missing from the table. The solution is to add the SBA to the FAR Council.

By adding the SBA to the FAR Council, changes that negatively impact small businesses could be increasingly mitigated, including discrepancies between the SBA and FAR that create headaches for small businesses and the acquisition workforce. These types of conflicts have led to protests on legal interpretations, which are costly for both the government and the industrial base. We believe that the addition of the SBA to the FAR Council would help create solutions to discrepancies between the agency and interpretations of the FAR that are unintentionally and negatively impacting small businesses.

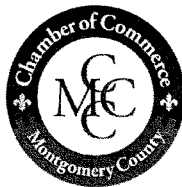
#### Subcontracting Plan Compliance

GovEvolve understands the role of subcontracting as an entry point for small businesses to enter the federal marketplace and build past performance. Subcontracting

is more important than ever as the government moves away from direct contracts to using larger vehicles. GovEvolve encourages the Committee to look at incentives that would spur subcontracting plan compliance and small business utilization.

In conclusion, IT companies like mine (ITVARS) who sell to the federal government have some unique challenges that we have outlined in this testimony. We have also included solutions such as the expansion of the *Small Business Runway Extension Act* to include employee-based size standards, creation of an ITVAR specific NAICS code and adding the SBA to the FAR Council. At the same time, we face many of the same challenges that every small business selling to the federal government encounters. GovEvolve members represent WOSBs/EDWOSBs, HUBZone certified, 8(a), SDVOBs, small and midsize businesses. Creating meaningful changes to SBA's contracting programs will not only benefit these businesses, but also ensure the federal government is getting the best value for federal agencies and taxpayers. It is critical that small businesses have access to the federal marketplace and that policies are in place to support their success. We urge the Committee to take bold steps to strengthen small business programs and fully integrate these programs into the government's buying strategies.

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



Testimony of  
Bruce Lansdowne

President & Chief Executive Officer, Trinity Technology Partners, Inc.

On behalf of the Montgomery County Chamber of Commerce

Before the House Committee on Small Business Subcommittee on  
Contracting and Infrastructure

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

July 16, 2019

Good morning Chair Golden, Ranking Member Stauber and Members of the Subcommittee, my name is Bruce Lansdowne. I am the President and CEO of Trinity Technology Partners, which develops and offers information technology services and solutions. We are based in Greenbelt, Maryland and I am here today to testify on behalf of the Montgomery County Chamber of Commerce (MCCC). MCCC is a 500-member organization located in Montgomery County Maryland, of which I am a member of its Board of Directors. Thank you for inviting me to testify today on this very important segment of our economy.

I would like to share a few observations based on my experience, which I hope the Committee will find helpful as you examine opportunities and challenges in the federal marketplace for small and midsize businesses. After I started my business, it was challenging to obtain opportunities to participate in the federal marketplace. Fortunately, I was given an opportunity to support as a subcontractor through a professional relationship that I had previously established with a large company. While we were given low-level, low-margin work, the work had high visibility with officials at the senior level of the agency. We took this work very seriously as we could not just do a good job, we had to do an exemplary job – and that we did. As a result, we began to receive so many accolades from the government customer that it almost became incomprehensible to our prime contractor. Despite all of this, it was still a five-year journey to receiving a prime contract with this agency. Unfortunately, this in large part due to the agency's deference to large companies.

I'll share one such example with you. I received frantic calls and emails from a large prime contractor requiring a small business on their team. My company actively participated in all the proposal activities and we learned that the large contractor was awarded the work. Post-award, we were pressured by the large contractor to further reduce our pricing. In the end, the prime contractor did not give us the opportunity to participate in the workshare as previously agreed upon and as a result, I placed a call to the small business director of the agency. Despite these efforts, the large contractor was not held accountable regarding their small business goals. While the small business director empathized, it was a costly lost opportunity for my company.

I certainly realize that small businesses must also do their part in providing exemplary services in the federal marketplace. It has been an amazing journey serving the missions of our nation's

government. We are very grateful for every opportunity to serve and we look at each challenge as an opportunity to make things better, not just for my company, but for the government customers and all businesses participating in the federal marketplace. It is due to my passion for the success of small businesses that I joined the MCCC Board of Directors to make a more impactful contribution.

The Chamber has been at the forefront of finding solutions to tackle the problems in the federal marketplace that exist around subcontracting. As background, an important part of the Chamber is its GovConNet Council, which is comprised of industry procurement experts and practitioners. The Council meets monthly to discuss federal contracting issues that affect small and midsize firms. Large companies are also an important part of the Chamber membership and they support efforts to assist small and midsize companies to obtain success in federal contracting. Last year, the GovConNet Council identified subcontracting as an issue that continues to be problematic for small businesses and prime contractors alike.

The Council convened four roundtables with industry, both large prime contractors and small subcontractors, as well as government officials to pinpoint the pain points for all sides of the equation. We enlisted the help of Bloomberg Government to identify what data exists on subcontracting, its accuracy and its purpose. Through these roundtables, the Council identified a lack of reliable data at the root of finding a solution to the problem of underutilized small businesses identified in small business subcontracting plans filed by prime contractors. As a result, the Council began to explore government databases such as USA Spending, the GSA Electronic Subcontracting Reporting System (eSRS) and other federal tools that monitored subcontracting plans and compliance. Our initial thought was to add additional capabilities to the system used to file subcontracting plans. However, we learned that eSRS is being modernized and GSA is open to input which appears to at least solve the problem of an outdated database.

The recommendations we bring to you today are a result of extensive discussions and consultations with our members and policymakers. Our goal is to improve accountability and transparency in subcontracting for small businesses.

**I. Empower OSDBUs to monitor and improve subcontracting compliance.**

Currently, every federal agency has an Office of Small and Disadvantaged Business Utilization (OSDBU) or an Office of Small Business Programs (OSBP). These offices are tasked with promoting the use of small businesses within their agency and helping the agency meet its annual small business goals. Their advocacy on behalf of small businesses within their agencies should include subcontracting compliance. Therefore, we are asking the Congress to give OSDBUs the authority and direction to coordinate with contracting officers (CO) to both monitor compliance and assist on remedial actions for primes falling short of their subcontracting plans. Currently, contracting officers must review every prime contractor's report within 60 days of the report's end date, and accept or reject the report. They also are required to provide an explanation for rejection. Since contracting officers have a vast amount of responsibilities, adding the support of OSDBUs would benefit both the CO's and small businesses. We note that in the past, SBA could not issue a rule giving OSDBUs the authority to monitor subcontracting plan compliance,<sup>1</sup> which is why it is critical that Congress grant this authority.

**II. Require SBA to report subcontracting dollars on their annual scorecard, not just percentages.**

The Small Business Administration's annual procurement scorecard is used to assess agency performance on reaching their small business contracting goals. Every year, the SBA works with each agency to set prime and subcontracting goals and their grades are based on the agreed upon goals. Each federal agency has its own small business contracting goal, negotiated annually in consultation with the SBA. The SBA ensures that the sum total of all of the goals meets the 23 percent target for the federal government as well as the socio-economic goals established by statute.<sup>2</sup> According to the SBA, an agency's overall grade consists of a number of factors, including: prime and subcontract awards to small business concerns, the comparison of the number of small business prime contractors in each of the five Small Business categories in the agency's top 100 Small Business North American Industrial Classification System (NAICS) compared to the prior year, and a peer review of the Office of Small and

---

<sup>1</sup> 13 C.F.R. § 121-25, (2013).

<sup>2</sup> U.S. SMALL BUS. ADMIN., *Small Business Procurement Scorecard Overview*, (last updated Mar. 15, 2019), <https://www.sba.gov/document/support--small-business-procurement-scorecard-overview>.

Disadvantaged Business Utilization (OSDBU) office compliance with Section 15(k) requirement of the Small Business Act.

However, a large gap in this data is the reporting of subcontracting dollars at each agency. While the scorecard lists the percentage of achievement of subcontracting at each agency, it does not list the dollar amount. This leaves both industry and government with an incomplete understanding of dollars flowing through subcontracts. It is critical that these numbers are made available, as the number of federal contractors working on unclassified prime contracts is at its lowest level despite a steady rise in government contract spending.<sup>3</sup> Additionally, in FY18, the vendor count of 115,000 contractors reflected a 27% drop in a 10-year period.<sup>4</sup> These statistics highlight both that prime contracts and task orders are growing larger, and that “Best-in-Class” designated contracting vehicles under the governmentwide category management initiative are being utilized more frequently. Therefore, small businesses must adapt to this way of buying, requiring them to be more open to subcontracting. Adding this component to the SBA scorecard would give small businesses much better information on which agencies to target for subcontracting opportunities.

### **III. Direct GAO to conduct a study of subcontracting authority, processes, systems and the reporting of subcontracting performance against established goals.**

The U.S. Government Accountability Office (GAO), according to its mission, “examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.” In that vein, we believe a GAO report on subcontracting would be helpful in identifying subcontracting issues and providing additional recommendations. We suggest that GAO prepare and submit the report within 120 days to include the following components: (1) analysis of statutory requirements/authority to set aside contracts for small businesses to the maximum extent practicable and if adequate authority is provided to the SBA to enforce subcontracting goals and performance; (2) analysis of goaling methodology for subcontracting and identification of inconsistencies; (3) analysis of the public availability and detail of data collected by the government in multiple federal data systems and (4) provide recommendations on how data accuracy and integrity can be improved.

<sup>3</sup> Paul Murphy, “Federal Supplier Base Continued to Shrink in Fiscal 2018,” Bloomberg Government (May 23, 2019).

<sup>4</sup> *Id.*

**IV. Maintain and enhance data collected through the Federal Subcontract Reporting System (FSRS).**

The Council reviewed multiple tools and federal websites and in consultation with Bloomberg Government, sought to identify the most accurate subcontracting data. The system we believe that contains the best data is the Federal Subcontract Reporting System (FSRS). This system was created in the Federal Funding Accountability and Transparency Act (FFATA), which was signed on September 26, 2006. The intent is to empower every American with the ability to hold the government accountable for each spending decision and reduce wasteful spending in the government.<sup>5</sup> The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov). The FFATA Subaward Reporting System (FSRS) is the reporting tool Federal prime awardees (i.e. prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime contract awardees will report against sub-contracts awarded and prime grant awardees will report against sub-grants awarded. The sub-award information entered in FSRS is displayed on [www.USASpending.gov](http://www.USASpending.gov) associated with the prime award furthering federal spending transparency.

Prime contractors awarded a federal contract or order that is subject to Federal Acquisition Regulation clause 52.204-10 (Reporting Executive Compensation and First-Tier Subcontract Awards) are required to file a FFATA subaward report by the end of the month following the month in which the prime contractor awards any subcontract greater than \$30,000. This reporting requirement is phased-in and subcontracts must be reported under federally-awarded contracts and orders valued greater than or equal to \$30,000.<sup>6</sup>

This tool is critical for transparency of government spending and gives both industry and government an understanding of the entire picture of the federal marketplace, which includes

---

<sup>5</sup> Federal Funding Accountability and Transparency Act Subaward Reporting System, <https://www.fsrs.gov> (last accessed July 20, 2019).

<sup>6</sup> *Id.*



subcontracting. Additionally, it allows the federal government's extensive supply chain to make informed, data-based decisions about whether to prime, team or subcontract an upcoming opportunity, as well as understand the broad structure and subcontract trends of major government markets like IT and Professional Services. We strongly recommend the FSRS data tool continues to be funded because of its importance to this issue.

#### **V. Improve Utilization of Small Business Set-Asides**

We encourage this Committee to look at meaningful changes to improve agency utilization of SBA's socio-economic contracting programs, such as WOSB/EDWOSB, HUBZone, SDVOSB and 8(a) programs. As evidenced by the fact that the government has never met its HUBZone goal and only met the WOSB goal once, federal agencies continue to struggle to work with small businesses. Reluctance to award work to small businesses was illustrated in a recommendation offered by the Section 809 Panel, established by Congress to review ways to streamline DOD's acquisition policies. The Panel recommended eliminating small business programs for readily available products and services purchases under \$15 million, and instead instituting a 5% price preference for small businesses. It is no surprise that MCCC led the effort to dissuade Congress from implementing this recommendation. Commissioners stated publicly that small business programs are too complex to be utilized by DoD – we agree. But rather than eliminate these programs, we recommend changes be adopted to simplify and streamline small business purchasing programs, making them easier to use.

One of the ways to change these programs to better reflect the trends in federal buying is enhancing the use of sole source authority. The Chamber supports H.R. 190, the "Expanding Contracting Opportunities for Small Businesses Act of 2019," which this Committee shepherded through the House in January 2019. We believe this legislation is a good start to increasing utilization of sole source contracts for small businesses given the reluctance of federal contracting officers to use this authority, due to the small dollar amount permitted. This legislation allows for WOSB sole source awards of \$4/7 million per year of a contract rather than the current one-time award of \$4 million/\$6.5 million. We support this legislation but suggest a change to the bill that would provide clarification to the acquisition community. We suggest amending H.R. 190 each time it reads "anticipated award price" to read "anticipated base year award price." The term,

“anticipated award price” always means total price for all programs to both contracting officers and agencies. Therefore, in order to make sure that it is clear that these amounts should be awarded each year, this change should be made. In addition, we ask the Committee to consider agreeing to higher dollar thresholds that have been proposed in the draft Senate reauthorization bill.

H.R. 190, while expanding opportunities, cannot be construed as parity. Currently, individually-owned 8(a) companies can currently obtain sole source contracts at \$4/7 million without market research or justification. Small businesses owned by Native entities, such as Native Hawaiian Organizations (NHOs), Tribes, and Alaska Native Corporations (ANCs), are authorized to participate in the SBA 8(a) program under special rules. These companies can be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs, on the other hand, require that a contracting officer must justify through market research that not two or more offers at a reasonable price are expected. The contracting community has interpreted this as “you are the only company in the world that performs this work,” leading to exceedingly few sole source awards. The Chamber recommends putting all socioeconomic contracting programs on equal footing.

#### **VI. Implement the Runway Extension Act**

We would like to thank this Committee for passing the “Small Business Runway Extension Act” last year, championed by the Chamber, which give companies the ability to count an average of five years of revenue instead of the current three years to determine size. Companies are eagerly awaiting its implementation by the SBA. This change will give small businesses a longer time period to progress from small to midsize businesses by greatly assisting businesses experiencing growth in the federal marketplace. However, many businesses are in limbo while waiting on the SBA to complete its rulemaking, including federal agencies that are in the process of structuring contracting vehicles. This has caused bewilderment for small and midsize companies. We urge the Committee to continue holding the SBA accountable in order to expedite this process.

In conclusion, we would like to thank this Subcommittee for its continued efforts to improve federal contracting access for small and midsize businesses. The Chamber will continue to work

with this Committee to strengthen the role of these businesses in the federal marketplace. This concludes my testimony and I am happy to answer any questions.



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

on behalf of the  
National Electrical Contractors Association

to the

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

for a hearing on:

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

July 16, 2019

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

**NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION**  
412 First Street, SE Suite 110  
Washington, D.C. 20003  
Phone: (301) 657-3110  
@NECAGovtAffairs

**Statement of Mr. Thomas DePace  
Chief Operating Officer of Advanced Sound Company  
On behalf of the National Electrical Contractors Association (NECA)  
Committee on Small Business  
Subcommittee on Contracting and Infrastructure  
July 16, 2019**

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

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

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

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

## **Cash Flow**

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

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

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

## **Prompt Payment of Change Orders**

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

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

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

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

### **Decreasing Federal Retainage Rates**

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

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

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

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

### **Public Private Partnerships and Bonding**

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

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

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



**Conclusion**

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

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

46

Testimony of Dorothy Callahan  
President, D Callahan LLC

Before the  
House Committee on Small Business Subcommittee on Contracting and  
Infrastructure

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

July 16, 2019

Chair Golden, Ranking Member Stauber, and Members of the Subcommittee, my name is Dorothy Callahan and I am the President of D Callahan LLC, as well as a Member of the Montgomery County Chamber of Commerce's GovConNet Council. Thank you for inviting me to testify.

A little background on why I am I am testifying today. I have spent my career working at large prime contractors as a Small Business Program Manager and Strategic Partnerships Director. In these roles, I have been responsible for many aspects of successfully working with small businesses. This includes fostering strategic relationships with internal program deal teams and potential partners, mentoring small businesses for success in the public sector and identifying partnerships to fill key capability gaps while ensuring customer and mission success – just to name a few. I worked with small businesses at trade shows and other conferences to promote and identify teaming partners during my tenure at these large firms.

In my role as Small Business Program Manager/Small Business Liaison Officer for a large prime's Global Business Services (GBS) Federal Practice, I was responsible for technical, professional and administrative duties to ensure proposal support, contract compliance, and reporting as defined in the government Federal Acquisition Regulations (FAR). I spent a lot of time ensuring meticulous compliance with our small business partners. I also served as a central liaison with the Office of Small and Disadvantaged Business Utilization (OSDBU) offices throughout the federal government agencies and developed mentor protégé agreements across civilian agencies.

My past positions gave me a unique perspective – understanding the needs and challenges of both prime and small business contractors in the federal marketplace. Based on

my experience, I would like to make a few recommendations to the Committee about changes that can be made to allow small businesses contractors to be more successful in the acquisition landscape.

The first issue I'd like to address is small business subcontracting plans. One of my many roles at my past companies was to plan, organize and coordinate the small business program, as well as make recommendations for input to the corporate strategic approach that would maximize corporate resources to enhance program efficiency and effectiveness. I also assisted our small business liaison office, subcontract and program directors with the facilitation of small business goals and accomplishments. Therefore, I spent many years facilitating and managing subcontracting plans – which includes being an advocate for our teaming partners internally. This gave me unparalleled insight into issues with these plans faced by both primes and small businesses. One of the changes that I believe would improve subcontracting for small businesses is to require the identification of small businesses listed in subcontracting plans. Currently, when prime contractors submit a proposal, there is no requirement to list the small businesses on the team. Instead, the submission lists the type of service that is going to be outsourced to small businesses and the socioeconomic status (WOSB, HUBZone, 8(a), SDVOSB) of the small businesses on the proposal. It takes a lot of time and money for both the prime and small businesses to coordinate on responding to a solicitation. Therefore, if the prime wins the contract with a small business listed on their team, the small business should be utilized. By listing the small businesses by name, it will allow contracting officers to more successfully evaluate a prime's progress on meeting their subcontracting plan goals.

Secondly, an important factor for prime contractors when submitting a proposal is their Contractor Performance Assessment Reporting System (CPARS) rating. In my previous roles, I coordinated and managed all corporate activities during the federal compliance reviews supporting audits by the Defense Contract Management Agency (DCAA) resulting in achievement of “exceptional” rating for my company. FAR Part 42.15 requires an annual past performance evaluation for primes, as well as interim evaluations at least every 12 months throughout the entire period of performance of the contract or order up to the final report.<sup>1</sup> Since this annual evaluation is required, I recommend that it should include an assessment of the prime’s subcontracting plans. This additional component of the evaluation would achieve two effects: allow oversight by contracting officers without additional burden and provide an opportunity for prime contractors to discuss their progress on meeting subcontracting goals.

When a prime contractor sets a subcontracting goal, they are required to show a “good faith effort” to meet it. The definition of this effort is ambiguous and can be interpreted loosely— much to the detriment of small businesses. Not all, but some large companies take advantage of this unspecified term, which leads to more of “checking the box” instead of working towards meeting the goals set forth in their subcontracting plans. This broad definition does not hold primes accountable for utilizing small businesses. Therefore, I support the Committee’s proposal that the good-faith standard should be removed and instead primes should be assessed on a pass/fail basis. This change would hold primes accountable for meeting their subcontracting goals. However, it is important that in this change the “fail” rating is

---

<sup>1</sup> Contract Performance Assessment Reporting System, <https://www.cpars.gov/pdfs/CPARS-Guidance.pdf> (last accessed July 10, 2019).

explicitly defined to avoid any confusion or ambiguity if a prime were to receive this rating. Primes should also have the ability in this new system to resolve this issue with the contracting officer, since there are instances where meeting the goals is not possible.

Finally, OSDBUGs are incredible resources within agencies that advocate for small business contractors. In my role as the central liaison with the OSDBUG offices, I have seen their effectiveness firsthand. They should be empowered to be utilized as an additional resource to contracting officers to assist in subcontracting plan compliance and remediation.

In summary, I have dedicated my career to developing strong relationships with businesses in all socioeconomic categories to assist in strategic preparation for pursuit of opportunities and partnerships within the federal market. I believe the meaningful policy changes outlined in this testimony will lead to increased utilization of small businesses in the federal marketplace. Thank you for the opportunity to speak with you today. This concludes my testimony and I am happy to answer any questions.



225 Schilling Circle, Suite 400  
Hunt Valley, MD 21031  
Telephone: 410-584-7000  
Fax: 410-771-1625  
[www.eaest.com](http://www.eaest.com)

## Statement for the Record

### House Committee on Small Business Subcommittee on Contracting and Infrastructure Hearing on "Helping Small Businesses Compete: Challenges and Opportunities in the Federal Procurement Marketplace"

July 24, 2019

United States House of Representatives Committee on Small Business Subcommittee on  
Contracting and Infrastructure  
Chairman Jared Golden  
Ranking Member Peter Stauber  
2361 Rayburn House Office Building  
Washington, D.C. 20515

Chairman Golden and Ranking Member Stauber,

We appreciate your convening of the hearing on July 16, 2019 to discuss issues related to the Small Business Administration's (SBA) contracting programs and small business competition practices. On behalf of all the employee-owners of EA Engineering, Science, and Technology, Inc., PBC (EA), we thank you for the opportunity to weigh in on one of the issues that was discussed during the hearing, the expansion of the Small Business Runway Extension Act (SBRE), to include small businesses that operate under employee-based size standards. We would encourage your Subcommittee, and the entire House Small Business Committee, to pass legislation that would extend the same "lookback" benefit to include companies like EA that operate under employee-based size standards.

We would also encourage your colleagues on the Committee to work with your Senate colleagues on a broad SBA reauthorization package, like the one that the Senate Committee on Small Business and Entrepreneurship is currently working on now. We are encouraged that the Senate has included a 5-year lookback for employee-based standards and would hope the House would pursue a similar effort.

EA is a 100% employee-owned Public Benefit Corporation that provides environmental, compliance, natural resources, and infrastructure engineering and management solutions to a wide range of government and industrial clients. In business for more than 45 years, EA has earned an outstanding reputation for technical expertise, responsive service, and judicious use of client resources. Headquartered in Hunt Valley, Maryland, EA employs approximately 500 professionals through a network of 26 offices across the continental United States, as well as



Alaska, Hawaii, and Guam. EA qualifies as a small business in the Environmental Remediation Services (ERS) sub-industry under NAICS Code 562910, which currently has a size standard of 750 employees, measured on a trailing 12-month basis.

**We strongly support the Runway Extension Act, and urge your Committee to consider expanding it to apply to employee-based size standards.**

Congress did something great for small business when it passed the SBRE in 2018. We think the SBRE goes a long way in providing a planning pathway for certain small businesses that want to grow and graduate from small business status in a position of strength. However, the SBRE excludes the small businesses that operate under an employee-based size standard. We would strongly encourage the Committee to fix this inequity and advance legislation that would afford the same 5-year lookback to businesses that operate under employee-based size standards.

The expansion of the calculation period for employee-based size standards makes sense on many levels. First, there are 505 industries governed by employee-based standards, nearly as many as the 526 industries covered by receipts-based standards. Employee-based size standards therefore represent nearly half of the industries governed by SBA, and should therefore be considered in any revision to the rules for calculating size standards. Second, employee-based standards are even more sensitive to business variability than receipt-based standards, because they are currently calculated over a 12-month rolling average with a new headcount every month, versus a current three-year period for receipt-based standards calculated once per year. Third, a longer calculation period makes even more sense for employee-based standards because the hiring of employees usually precedes the earning of revenue in a typical business. Thus, when we hire a team of employees in anticipation of a contract or task order award, the impact to our headcount is immediate, while the revenue may follow months or years later.

**Allowing a longer “runway” to calculate our average headcount would give us much-needed insulation from headcount volatility, and time to adapt our business model, before graduating from small business status.**

As a small business, we are very concerned with ensuring our business has a successful pathway towards future success and growth. Our business planning cycles are typically done in 5-year windows, not year by year or month by month, which we are forced to consider under the current 12-month rolling average approach. Having a longer glidepath to count employee totals would allow EA, and businesses like ours, to plan, hire, and retain employees for the long-term, while developing our strategic path forward to graduate through sustained growth.

The current 12-month rolling average produces heightened degrees of volatility when we bring on new hires. This volatility is magnified because every employee we bring aboard essentially





counts as 1/12 towards our rolling average. EA often engages in large environmental remediation projects which involve the hiring of short-term field staff and technicians, raising the risk that we could inadvertently exceed our size standard. Under a five-year lookback, that risk would be lessened, and we would be able to hire for projects and meet the needs of our clients with more flexibility. A longer average period would go a long way in ensuring our company can hire and retain quality people, while planning for our long-term growth and eventual graduation from small business status.

\*\*\*

While your Committee continues your great work, I would like to offer EA as a helpful resource in any way possible. I know your Committee will continue to look at all SBA related contracting issues, and SBA reauthorization as a whole, and we appreciate the opportunity to lend our voice to your work on SBA oversight. Thank you for your time to hear our concerns and for your efforts to foster the success of America's small businesses.

Sincerely,

A handwritten signature in black ink that reads 'Ian D. MacFarlane'.

Ian D. MacFarlane  
President and Chief Executive Officer  
EA Engineering, Science, and Technology, Inc., PBC

IDM/pn



July 22, 2019

**Statement for the Record:**

***House Committee on Small Business Subcommittee on Contracting and Infrastructure  
July 16, 2019 Hearing on Helping Small Businesses Compete:  
Challenges and Opportunities in the Federal Procurement Marketplace***

United States House of Representatives  
Committee on Small Business  
Subcommittee on Contracting and Infrastructure  
Chairman Jared Golden  
Ranking Member Pete Stauber  
2361 Rayburn House Office Building  
Washington, D.C. 20515

Chairman Golden and Ranking Member Stauber,

The Employee-owned Contractor Roundtable (ECR), a coalition of federal government contractors that are ***wholly-owned through an employee stock ownership plan (i.e., 100% ESOPs)***, appreciate the opportunity to provide comments on the recent hearing your Subcommittee held on SBA's contracting programs and the overall federal procurement landscape. ECR members represent several sectors of the economy and provide services for their government clients ranging from tractor engines and timing belts to advanced combat simulators and sonar detection technologies. ECR members are located across the entire United States and play a critical role in American industry. ***ECR believes that your Subcommittee, and the House Small Business Committee as a whole, should examine policy options to promote 100% ESOP contractors which would help align procurement policy with longtime national policy of incentivizing ESOPs, and use the ESOP structure as a model to promote small business growth in the United States.***

ESOPs were established by Congress in the 1970s and allow employees to have an ownership interest in their company by providing each employee-owner with a portion of the company's stock on an annual basis. As employee ownership in America has grown, employee-owned businesses have consistently provided their communities, the economy, their workers and their customers with unique and tangible benefits. It is our strong belief that the benefits to the federal government from contracting with an ESOP are unique and that 100% ESOPs provide excellent service to their federal partners. Since its inception, lawmakers have worked hard to expand employee-ownership and encouraged more companies to convert to be employee-owned.

This is hardly surprising as 100% ESOPs consistently report better job growth, fewer job reductions during economic downturns, disproportionately higher employee retirement savings and narrower wealth gaps between workers and management. All of this leads to companies with a strong resistance to foreign acquisition, meaning jobs stay in the communities where the companies



reside. These benefits stem from the inherent dynamics that arise when employees have a real stake in the business they contribute to on a daily basis. Employee-owners show greater job satisfaction and stay in their positions longer than their peers at non-ESOP companies. Workers then pass on to the federal government superior service when federal contracts are awarded to an ESOP company.

Because of the advantages ESOP's provide the U.S. economy, the federal government has supported and promote ESOPs through tax policy. This support, however, has unfortunately not translated to federal contracting practices. ***We believe it is time to modernize federal contracting regulations to align with national policy objectives by advancing initiatives to support and expand employee ownership within federal government contracting. We would encourage your Subcommittee, and the entire House Small Business Committee, to consider policy options that promote 100% ESOPs in SBA programs and federal procurement policy, and analyze ways that the ESOP structure may enable small business to grow and compete, overcome challenges in federal procurement, and provide opportunities to expand the benefits of employee ownership to more small businesses.***

#### **Benefits of Employee Ownership**

When a company is owned by its employees, important socioeconomic dynamics arise that benefit workers, the company, the community and the national economy. Because ESOPs are regulated by a strict legal code that requires ownership to be broadly held across employees, from the mailroom to the boardroom, companies that are ESOP-owned – and particularly those that are majority or 100% ESOP – consistently report better job growth, fewer job reductions during economic downturns, boosted employee savings, and are less susceptible to job outsourcing or foreign interference. Principal among the data points that underscore the specific value ESOPs contribute to national economic interests are:

- Despite the financial stresses caused by the most recent economic downturn, **ESOPs kept more far more jobs than other private companies.** According to a 2012 study by Alex Brill, employment among employee-owned firms increased more than 60% from 2001-2011, while the private sector as a whole had flat or negative growth in the same period<sup>1</sup>.
- **ESOPs reduce wealth inequality in the American workforce.** A 2016 study by Jared Bernstein shows that by increasing wage-earning employees' share of their business capital, ESOPs reduced the wealth concentration among the top 10 percent of employees by 2.5%<sup>2</sup>.
- **ESOPs provide safe, secure retirement savings vehicles for millions of employee-owners:** At a time when 35% of private sector workers don't have access to traditional 401k benefits or a retirement savings vehicle, including 41% of millennials,<sup>3</sup> ESOPs not only provide 100%

<sup>1</sup> "An Analysis of the Benefits ESOPs Provide the U.S. Economy and Workforce," Brill, Alex, Matrix Global Advisors, 07/26/2012

<sup>2</sup> "Employee Ownership, ESOPs, Wealth, and Wages," Bernstein, Jared, 01/2016

<sup>3</sup> "Retirement Plan Access and Participation Across Generations," Scott, John, Pew Charitable Trusts, 06/21/2019



retirement savings coverage for all their employee-owners, but an overwhelming number of businesses wholly-owned through an ESOP also provide a 401K.

- **ESOPs stabilize employment, root productive capital in communities, and increase the assets and incomes of working families:** A 2017 study by the National Center for Employee Ownership (NCEO) found that ESOPs provide better net income and other benefits to key demographic groups targeted by current federal contracting programs. The [report](#)<sup>4</sup> found that women, workers of color, and low-income individuals benefit greater when working at an ESOP company compared to a non- ESOP company. Additionally, the Rutgers School of Management and Labor Relationships recently found in a study that employee ownership narrows the gender and racial wealth gaps, which again, are key demographic groups targeted by current Small Business Administration (SBA) contracting goals. The chart below outlines the key findings from that study.

Wealth Comparison by Gender and Race	Median Wealth of Single Workers in the U.S.	Median ESOP Account Value of Low/Moderate-Income Workers in Rutgers Survey
African-American Women	\$200	\$32,000
African-American Men	\$300	\$180,000
Latina Women	\$100	\$143,500
Latino Men	\$950	\$200,000
White Women	\$15,640	\$172,000
White Men	\$28,900	\$323,500

*Building the Assets of Low- and Moderate-Income Workers and their Families, 2019.*  
[https://smmr.rutgers.edu/sites/default/files/rutgerskelloggreport\\_april2019.pdf](https://smmr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf)

**Congress Should Incentivize 100% ESOPs in Federal Contracting as a solution to a number of issues impacting small business growth concerns and the shrinking federal supplier base.**

During the hearing, both witnesses and Members alike, discussed the need to find growth mechanisms that allow small businesses to graduate through the size standard ranks and identify new pathways to graduation. That is why we believe that incentivizing 100% ESOPs in federal procurement is good policy and can benefit both the federal government and small businesses. A recent [report](#)<sup>5</sup> by Bloomberg shows that the number of federal contractors available to the federal government is shrinking, causing a dearth of options and a lack of flexibility for procurement managers (PM) and contracting officers (CO). For small businesses looking to grow, there is no avenue to real growth that provides small business owners with the ability to control their company's future without i) capping employment or negatively impacting their workforce, ii) stop pursuing federal contracting opportunities or iii) facing the prospect of selling to their larger competitors, private equity, or hedge funds. In this last scenario, when a small business facing

<sup>4</sup> "Employee Ownership & Economic Well-Being," Wiefek, Nancy, The National Center for Employee Ownership, 06/15/2017

<sup>5</sup> "Federal Supplier Base Continued to Shrink in Fiscal 2018," Murphy, Peter, Bloomberg Law, 05/23/2019



graduation from their size standard, or from small business set-aside work, is forced to sell. They have to sell from a position of weakness where the selling price doesn't accurately reflect the company's true enterprise value. In such cases, it is the employees that are negatively impacted, while simultaneously the government loses a prospective partner to do business with. This is wrong.

We believe that your Subcommittee, the entire House Small Business Committee, and Congress as a whole, should look at advancing provisions identical, or similar, to recently introduced legislation H.R. 2022 that allows 100% ESOP businesses the ability to compete for small business set-aside contracts on a fair and open basis, among other provisions. This legislation specifically incentivizes only 100% ESOP companies of which there are currently only 75 companies in total (the majority of which are considered small under the NAICS standard) that participate in federal contracting work. If passed, we think this legislation would also:

- **Allow 100% ESOPs to grow beyond small while protecting their ESOP:** This legislation would help 100% ESOPs protect their ESOP, their culture, and their employee-owners retirement future from having to sell to larger, non-ESOP companies just because they are about to graduate from their small business size standard. Further, it would allow 100% ESOPs, which have proven to be great partners to the federal government, to continue to service contracts;
- **Provide a pathway for growth for small businesses:** Small businesses could convert to 100% ESOP even before hitting their small business size threshold. This legislation would encourage them to convert sooner and would enable these companies to grow at a quicker, steadier pace. 100% ESOP companies are built for the long term, have the resources to invest in their company, and will be more able to compete against larger companies as they grow from small to medium;
- **Protect the ability for small businesses to compete for federal contracts:** Even if there are some 100% ESOP mid-size businesses that will compete for contracts, generally COs and PMs like doing business with small businesses and the small businesses have an edge when competing for small contracts. The COs and PMs like the smaller business because they are much easier to deal with and tend to be less expensive, more responsive and provide better value. We believe it is very unlikely that a 100% ESOP company with more than 1,000 people would have an advantage over a small business on contracts requiring 10's to 100's of people. Further if the contract is to provide a prototype or product, small businesses tend to win on innovative ideas and the creative capabilities of a small group of people. As such, there is no inherent advantage to being larger; and
- **Continue Congress' tradition of incentivizing ESOPs:** Congress has a long history, dating back to the 1970's of promoting employee ownership. Study after study has shown that ESOPs provide greater retirement savings, share wealth among their employee-owners and create a unique work culture where all employees are aligned in meeting their company's long-term goals. The federal government has incentivized ESOPs through tax policy, through resolution, and in the Small Business Administration. We believe Congress is missing an opportunity to incentivizes



the creation of more employee-owned companies through federal procurement practices. This legislation, if enacted, would meet Congress' historic tradition of creating more employee-owned companies while ensuring the federal government maintains its relationship with business partners they've long worked with to complete federal contracts in a timely, and effective, manner. ESOPs, provide the federal government with more partners in federal procurement, create additional flexibility for COs and PMs to execute work and would provide a pathway for small businesses looking to graduate from small to medium in a position of strength.

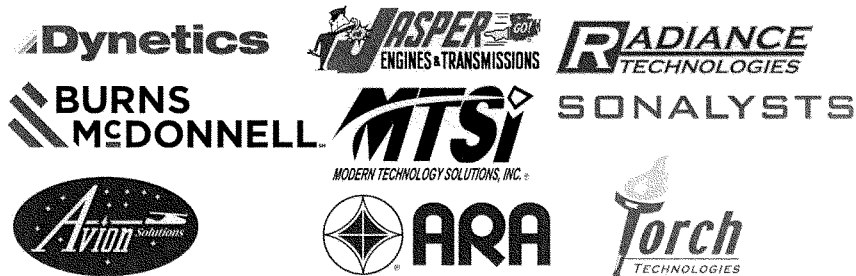
#### Conclusion

We appreciate your Subcommittee's interest in identifying the challenges and opportunities that exist in federal procurement for small businesses. We all share the goal of ensuring that small businesses have a pathway towards growth and have appropriate opportunities to prosper. We also think that Congress is missing an opportunity to incentivize employee ownership with federal procurement and SBA contracting policy. Changes to these policies will provide small businesses with a pathway through SBA programs while simultaneously expanding access to enhanced retirement savings and other benefits for America's workers.

Thank you for the opportunity to submit this testimony and the members of ECR look forward to hearing the solutions put forward by Congress to address this critical issue. If you need to contact us, please reach out to Matt Pearce at [mpearce@vennstrategies.com](mailto:mpearce@vennstrategies.com).

Respectfully,

The Employee Owned Contractors Roundtable





Testimony of

Delali Dzirasa

President and Founder, Fearless Solutions  
Baltimore, MD

On Behalf of  
HUBZone Contractors National Council

House Committee on Small Business Subcommittee on  
Contracting and Infrastructure

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

July 16, 2019

The HUBZone Council is pleased to submit the following testimony to the Committee. My name is Delali Dzirasa and I believe deeply in the power of human potential, regardless of where on the U.S. map you call home. However, I also believe that to unlock this potential, support is needed. Support may be in the form of resources, more efficient government programs, or in some cases, mere encouragement combined with opportunity and timing that creates an environment for success.

It is with that belief that I founded Fearless in 2009, a certified HUBZone and 8(a) digital services firm located in Baltimore, Maryland. Our mission is to build software with a soul and to help create a world where good software powers things that matter. At Fearless, we devote ourselves to building the same cutting edge software seen in the commercial space for our government customers. Self-driving cars are no longer a thing of the future, yet depending on what part of the country you live in, you still may not be able to pay your water bill online. Fearless exists to help bridge that gap and to make government services and technology work better for all. My company currently powers: SBA.gov, the digital face of the Small Business Administration (SBA), Search.gov, the federal government's search engine, and Login.gov, the service that will become the single entry point for residents who need to access federal resources. We are also responsible for supporting the build out of Blue Button 2.0, a Centers for Medicare and Medicaid Services (CMS) initiative that allows millions of Medicare beneficiaries across the country to easily and securely share their medical claims data. We have also been honored to support software for the Department of Defense's (DoD) Mentor Protégé program, which allows larger mentor firms to support the growth of small businesses in the DoD supply chain. This contract is particularly meaningful to us, as a former DoD Protégé company. Fearless has



had many opportunities in our capacity as a certified 8(a) and HUBZone company, which is why the HUBZone Contractors National Council is submitting testimony on this important topic. The HUBZone Council is a non-profit trade association providing information and support for companies and professionals interested in the Small Business Administration's (SBA) HUBZone program. We would like to thank the Committee for their commitment to small businesses and for advancing small businesses work in the federal marketplace.

Fearless has a unique history with the HUBZone program, which dates back to 2010. In 2010, less than 1 year after founding Fearless on paper, I attended an SBA course detailing the certification programs offered by the agency. It was during this course that I first heard about the HUBZone program. The program's mission is to help provide economic development and investment in distressed communities, which nurtured my belief that human potential, with the right amount of support, can encourage unlimited success. I was sold and applied for the certification. Later that year we received our HUBZone certification and with our new found excitement, it became my mission to highlight the benefits of the program to contracting officers and other acquisition personnel across the government.

Time and time again I would hear what a great program it was, and how the mission was compelling, however, I also kept hearing about the challenges of contracting to HUBZone companies. Therefore, I began looking at all of the information and programs designed to support the HUBZone program. As I looked at the data, I realized that something about the program was not working well. The federal government has never met its goal of

awarding 3 percent of all prime dollars to HUBZone firms— hovering around 1.9-2 percent each fiscal year. This percentage equates to well over \$7-8 billion in spending that was not making it into communities most in need. This is an obvious missed opportunity for both the government and underserved communities. Each day as I walked to work, I saw people going hungry or in survival mode due to the lack of opportunity in these low income and high unemployment communities— the very ones the HUBZone program was designed to help. The need of our community overcame us, and it became a labor of love for Fearless to try to figure out how to solve this problem. We came to understand that the underutilization of the program had a lot to do with the technology that was being used, and with our tech background, we felt we were most equipped to help.

The SBA HUBZone map at that time was slow, dated, and in dire need of modernization. It was also reporting bad data. In fact, our company move from Baltimore County to Baltimore City was driven by an error in the map that showed our location was an expiring HUBZone. In actuality, two census tracts were merging, and the map was reporting data for the wrong tract. Fearless ended up scraping the SBA data on the map and building our own version. We developed this into a tool called HUBFinder, which is a compliance system that affords the opportunity for companies to grow and scale in the HUBZone program. It turned from an internal tool, to one other certified HUBZone firms wanted to use, with finally a subsequent national release. Shortly thereafter, SBA discovered and awarded us a contract to help modernize the HUBZone map and technology nationwide. However, the technology is not the only reason the HUBZone program is not being utilized.

Simply put, not enough of the contracts have been set-aside for HUBZone certified firms. Contracting officers often voice that they are unable to find enough qualified HUBZone firms to set-aside contracts. However, HUBZone companies also complain they have a hard time finding contracts. One of the reasons for this issue is the expectation that if a firm wants to compete, they should respond to market research to get the work set-aside. However, HUBZone firms have a median size of 4 employees<sup>1</sup> and with the thousands of RFI's and Sources Sought released each year, a firm of that size just does not have the bandwidth to adequately respond to all of those requests. This results in a stalemate where the market research is laborious for both sides, and HUBZone firms in economically distressed communities continue to lose out.

The HUBZone Program spending has been in decline for the last 10 years, and most federal agencies fall well short of meeting the 3 percent spending goal for HUBZone firms. Recently, the U.S. Small Business Administration and Congress have taken several positive steps to improve the HUBZone program and help federal agencies and prime contractors increase their HUBZone spending. The HUBZone Program is needed now more than ever, as the number of HUBZone locations around the country have roughly doubled since Congress first created the program more than 20 years ago. The HUBZone contractor community is optimistic that the Congressional actions to provide more certainty, flexibility, and fair requirements for the program will help it fulfill its promise for more federal agencies, prime contractors, and HUBZone communities across the country. The Council has identified the following changes that would increase the

---

<sup>1</sup> U.S. Gov't Accountability Off., GAO-15-234, *Opportunities Exist to Further Improve HUBZone Oversight* 56 (2014).

utilization of the HUBZone program, which in turn would greater achieve its mission of making a positive impact within underserved communities.

#### I. Applying the HUBZone Price Evaluation Preference to Task Orders<sup>2</sup>

The HUBZone price evaluation preference helps to level the playing field for HUBZone firms in full-and-open competitions and allows federal agencies greater opportunity to devote federal spending to HUBZone firms. Currently, the HUBZone price evaluation preference is not used as widely as it could be because of the interpretation that the HUBZone price evaluation preference does not apply to task orders. With the federal government increasingly driving its spending through IDIQ contracts, such as the “Best in Class” contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders.

The price evaluation preference language in the Small Business Act is very broad and does not exclude orders. It states that “in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror . . . .” U.S.C. § 657a(b)(3)(A). The only statutory exception for the application of the HUBZone price evaluation preference is for procurements of commodities. The fact that Congress expressly provided for one exception, but did not provide an exception for task orders, indicates Congress did not intend there to be an exception for task orders.

---

<sup>2</sup> EXISTING STATUTORY AND REGULATORY PROVISIONS SUPPORT APPLICATION OF THE HUBZONE PRICE EVALUATION PREFERENCE TO TASK ORDER, PilieroMazza PLLC. (Jon Williams and Tim Valley, 2019).

Moreover, the statute says that the price evaluation preference applies “in any case.” Given this very broad phrase, and the fact that there is only one explicit exception (for commodities), the HUBZone price evaluation preference should be applied as broadly as possible.

The Small Business Act states that the price evaluation preference applies when “a contract” is awarded. SBA has previously taken the position that, when the Small Business Act uses the term “contract,” this includes task orders. This is also consistent with the Supreme Court’s ruling in *Kingdomware* and FAR 2.101, which defines contract broadly and explicitly includes orders. Additionally, placement of orders under indefinite-delivery contracts falls under the statutory language “awarded on the basis of full and open competition” because the placement of the order (which is a contract) qualifies as a procurement where all responsible sources are able to submit bids, which fully satisfies the definition of full and open competition under the statute; or, in the alternative, task orders are a part of contract performance, and if the master contract was awarded under full and open competition, then this flows down to the ordering stage. Either way, the HUBZone price evaluation preference applies. Regarding orders placed under the Federal Supply Schedules, the FAR explicitly provides that “orders placed against a [Multiple Award Schedule], using the procedures in this subpart, are considered to be issued using full and open competition . . . .” 48 C.F.R. § 8.404(a).

The counter-argument to these interpretations is in FAR 19.1304, which states that “this subpart” does not apply to orders under indefinite-delivery contracts and orders under FSS contracts. Insofar as FAR 19.1304 is interpreted to create an exception from the

HUBZone price evaluation for task orders, we believe this exception is contrary to the Small Business Act, for the reasons stated above.

While we believe the law is clear, we urge Congress to make its intent clear, as procuring agencies are not following this interpretation due to a conflicting interpretation of FAR 19.1304. There would be significant benefit that application of the HUBZone price evaluation preference would have for SBA, agencies, and HUBZone firms to increase HUBZone spending and positively impact the communities these companies serve.

## II. Clarifying Attempt to Maintain for the Contracting Workforce

The HUBZone program has a requirement that 35 percent of all of employees must reside in a HUBZone area. While this residency requirement is critical to the mission of the program, sometimes employees move or find different employment, thus leaving the HUBZone company out of compliance. If a company has been awarded a contract, it must “attempt to maintain” this residency requirement level. If the business falls below the 35 percent threshold, it does not automatically lose its contract, but must make a good faith effort to return to compliance. However, when a company has fallen below the 35 percent requirement, the company is not allowed to submit proposals for new contracts until it is back in compliance. This can be problematic for the acquisition workforce during market research, as it is not possible to see if a company is claiming attempt to maintain. Therefore, the Council recommends that SBA add a field to the Dynamic Small Business Search (DSBS) to clearly identify those companies claiming attempt to maintain. This change would provide clarity to the acquisition workforce that these parties are not currently eligible for an award, as well as mitigate protests.

### III. Streamlining Award Eligibility for HUBZone Firms

For several years, the Council has suggested a change to the current requirement that a HUBZone company must verify eligibility at both the time of bid and award of a federal contract. Given the length of time that a federal procurement can take from bid to award, this verification requirement creates an undue and complicated compliance burden on small businesses in the HUBZone program. A change to an annual recertification would give contracting officers greater assurance that HUBZone contractors will still be eligible for award, even if the award occurs after the company was no longer eligible at the time of recertification. Furthermore, this change gives HUBZone companies a more efficient path toward compliance.

### IV. Locating Contracts in Designated HUBZone Areas

The HUBZone program's mission is to provide opportunity to underserved communities by giving small businesses incentives to locate and hire in areas that otherwise might not attract their companies. In order to further fulfill the mission of the program, the Council believes that federal agencies should consider awarding HUBZone set asides for contracts that can be performed at the contractor's facility. These opportunities would give greater opportunities to these communities and the workforce that supports these companies. Additionally, limiting or discouraging the use of performance radius requirements from contracts would also encourage increased utilization of HUBZone companies. Many contracting opportunities still include language which requires the contractor's site to be

within 50 miles of the procuring agency, which acts as a deterrent for small businesses to relocate or employ individuals from these underserved communities.

While the Council believes the above changes to the HUBZone program will allow for greater opportunity, it also recognizes that there are larger issues in small business contracting that include other socioeconomic programs. As the government shifts its acquisition strategy, small business contracting needs to evolve as well.

#### V. Expanding Sole Source Contract Opportunities for HUBZone Companies

The Council is dedicated to fighting for government acquisition practices that maximize small business ability to compete. However, the governmentwide push to increase the use of category management leaves businesses small shut out of opportunities to contract across the government. As government buying continues to trend toward buying through large vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. The Council supports eliminating option years for sole source contracts in the House-passed legislation, H.R. 190, “Expanding Contracting Opportunities for Small Businesses Act of 2019.” We also encourage the Committee to consider adopting the Senate proposed threshold levels of \$8 million (general) and \$10 million (manufacturing). While this bill is a step in the right direction, it is not parity.

Increasing the award amounts for sole source contracts is extremely beneficial to the small business contracting community, however, it is equally as important to streamline



and simplify rules for awarding these contracts. Our members have been told over and over again by the federal workforce that awarding a sole source to a HUBZone certified company is too complicated. The Council believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards to all programs. A current hinderance to the awarding sole source contracts is the requirement that a contracting officer must show that she/he does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses.

#### VI. Changing Reporting Requirements to Accurately Reflect Contract Set-Asides

Each year, the Small Business Administration issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3 percent. Despite this small number, the federal government has never met its goal. In FY2018, 1.7% of prime contract dollars went to HUBZone businesses.<sup>3</sup>

---

<sup>3</sup> *Fed. Gov't Achieves Small Business Contracting Goal For Fifth Consecutive Year with Record Breaking \$105 Billion to Small Businesses*, Press Release, U.S. Small Business Admin. (May 22, 2018), available at <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/federal-government-achieves-small-business-contracting-goal-fifth-consecutive-year-record-breaking>.

Despite this small number, the Council believes that even less contracts have gone to HUBZone businesses, due to inaccurate reporting. Agencies often count the same dollar value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, if the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency meeting all of those goals. This practice ultimately inflates the data reported on small business contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited, instead being able to count the same dollar value towards multiple goals. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

#### VII. Adding the Small Business Administration (SBA) to the FAR Council

The Federal Acquisition Regulatory (FAR) Council was established to assist in the direction and coordination of government-wide procurement policy and government-wide procurement regulatory activities in the Federal Government. Current Council Members include the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space and the Administrator of General Services. While these individuals have deep knowledge of federal acquisition, a voice of the industrial base is missing. The Council supports adding the appropriate representative from the Small Business Administration.

By adding the SBA to the FAR Council, we believe that delays impacting small businesses could be further mitigated. For example, there has been a discrepancy for more than two years between the FAR and an SBA's updated limitations on subcontracting rule that use different formulas to determine compliance. While the SBA rule allows the use of similarly situated entities on small business set-asides and 8(a) contracts, the FAR does not. This has created significant issues for both small businesses and the contracting community who have been confused on which rule to follow. Additionally, this conflict has led to legal protests on interpretations – which are timely and costly for both the government and small businesses. Adding SBA to the FAR Council could help accelerate solutions to discrepancies between the agency and interpretations of the FAR.

#### VIII. Ensuring Subcontracting Plan Compliance

Subcontracting is a way for small businesses to enter the federal marketplace and build past performance. With larger contracts being utilized by the federal government, subcontracting is more important than ever. It is critical that we look for ways to reward prime contractors that adhere to subcontracting plans and penalize those that do not. Presently, there is little to no recourse for prime contractors that fail to meet their small business subcontracting goals. The Council encourages the Committee to look at incentives that would spur subcontracting plan compliance.

#### IX. Timely Implementation of the Runway Extension Act

In December 2018, the “Small Business Runway Extension Act” was signed into law, requiring SBA to allow companies to use a five-year lookback for the purpose of size determination, instead of the current three years. This bill gives companies a little more runway and flexibility when growing out of their small size status. However, SBA has failed to implement the law, which is causing confusion for small and midsize companies. To clarify the law for SBA, the HUBZone Council supports swift passage of H.R. 2345, the “Clarifying the Small Business Runway Extension Act of 2019.” This bill, introduced by the House, requires SBA to issue final regulations implementing the Small Business Runway Extension Act by Dec. 17, 2019 and creates a transition period allowing for small businesses to use a 3-year size standard rather than the 5-year standard – whichever keeps them small – for up to 6 months after SBA issues final regulations implementing the law. Small businesses cannot afford continued uncertainty around the implementation of this law.

#### X. Increasing Government Contracting Opportunities with Universities

Historically, federal contracts with universities result in a higher percentage of dollars that stay within the community. The Council recommends that Congress create exceptions for performance requirements for universities or allow them to qualify as similarly situated entities. This would encourage small business subcontracting with universities and create job placement for students, which would stimulate the economy within these communities. Additionally, it would be beneficial to allow universities to hold facility clearances and let students apply for security clearances while they are still in school.

Conclusion

The underlying principle behind the HUBZone program, established 20 years ago, remains relevant today — to decrease unemployment, and revitalize low-income communities by encouraging businesses to locate in these HUBZone areas. Changes to SBA's contracting programs will not only benefit small businesses, but, create much needed jobs through wealth creation in distressed areas. It is crucial that SBA allocates adequate resources to implement these changes. As the government prioritizes buying through category management, the contracting programs at SBA are of critical importance for small businesses to access and succeed in the federal marketplace.



Testimony of

Women Impacting Public Policy (WIPP)

House Committee on Small Business Subcommittee on  
Contracting and Infrastructure

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

July 16, 2019

Women Impacting Public Policy (WIPP), a nonpartisan organization advocating on behalf of women entrepreneurs, is pleased to submit this testimony for the record on a very important segment of our economy.

The number of federal contractors working on unclassified prime contracts is at its lowest level despite a steady rise in government contract spending.<sup>1</sup> In FY18, the vendor count of 115,000 contractors reflected a 27% drop in a 10-year period.<sup>2</sup> These statistics show that prime contracts and task orders are growing larger, and contracting vehicles designated as “Best-in-Class” under the governmentwide category management initiative are becoming the contracting vehicle of choice. These statistics also bring attention to the need to adapt to this way of buying, which requires new strategies for small businesses and changes to SBA contracting programs to increase small businesses participation. SBA has increasingly encouraged small businesses to consider teaming, joint ventures, and mentor-protégé strategies to meet these larger requirements. While the emphasis shifts on the importance of subcontracting, we would note that data on subcontracting is not readily available—thereby hampering a small business’ ability to know which primes to approach and which agencies to target for subcontracting opportunities.

In addition to new buying strategies, we encourage this Committee to look at changing socio-economic programs, such as WOSB/EDWOSB, HUBZone, SDVOSB and 8(a) programs to better reflect the trends in federal buying and the reluctance of federal contracting officers to use these programs.

---

<sup>1</sup> Paul Murphy, “Federal Supplier Base Continued to Shrink in Fiscal 2018,” Bloomberg Government (May 23, 2019).

<sup>2</sup> *Id.*

Time and time again, women-owned businesses tell us that contracting officers do not understand the WOSB/EDWOSB program, requiring women contractors to come armed with details on the program and specific instructions on how to use the program. In earlier testimony by GAO, they found that contracting officers issued awards under the wrong NAICS codes to WOSBs and made other contracting mistakes. It seems that SBA and other federal agencies could put in place an incentive program for contracting officers to use these socioeconomic programs. Even a simple recognition program would be helpful to the contracting officers that go the extra mile of using these programs in their procurements. Recognition goes a long way in securing promotions and building a successful career path.

This lack of understanding was illustrated in a recommendation offered by the Section 809 Panel, which reviewed ways to streamline DOD's acquisition policies. The Panel recommended eliminating small business programs for readily available products and services purchases under \$15 million, and instead instituting a 5% price preference for small businesses. Commissioners contended publicly that small business programs are too complex to be utilized. Rather than eliminate these programs, we recommend changes be adopted to simplify and streamline small business purchasing programs. With respect to the WOSB/EDWOSB program, we recommend that Congress require education for contracting officers. The law establishing these programs has now been in place since 2011— a full eight years. Yet, given the lack of knowledge about the program, it is still considered "new."

Additionally, we suggest changing sole source rules to make them uniform. H.R. 190, the "Expanding Contracting Opportunities for Small Businesses Act of 2019," passed by the House, is a good start. This legislation allows for WOSB sole source awards of \$4/7 million per



year of a contract rather than the current one-time award of \$4 million/\$6.5 million. We support this legislation with one change to the bill that would provide clarification to the acquisition community. We suggest amending H.R. 190 each time it reads “anticipated award price” to read “anticipated base year award price.” The term, “anticipated award price” always means total price for all programs to both contracting officers and agencies. Therefore, in order to make sure that it is clear that these amounts should be awarded each year, this change should be made. In addition, we also urge the House to support the proposed Senate increase of thresholds to \$8 million generally and \$10 million for manufacturing. This change will be incredibly beneficial by giving small businesses a chance at growth with the potential for multiple years of revenue.

However, this cannot be construed as parity. 8(a) companies can currently obtain sole source contracts at \$4/7 million without market research or justification. Small businesses owned by Native entities, such as Native Hawaiian Organizations (NHOs), Tribes, and Alaska Native Corporations (ANCs), are authorized to participate in the SBA 8(a) program under special rules. They can be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs require that a contracting officer must justify through market research that not two or more offers at a reasonable price are expected. The contracting community has interpreted this as “you are the only company in the world that performs this work,” leading to exceedingly few sole source awards. WIPP recommends Congress put all socioeconomic contracting programs on equal footing.

We understand that there are reasons for some differences in the programs, but we reject the notion that each program must be unique with its own set of complicated certifications. This

only leads to impediments to awards, as seen in the HUBZone and WOSB programs, which are underutilized by federal agencies. It appears to us that certification for the WOSB/EDWOSB program should be as streamlined as possible, given that many of the elements required are also requirements for other certifications. In addition, we believe that all WOSBs who are willing to participate in the federal market should be certified even if they do not intend to use the WOSB/EDWOSB set aside program.

Furthermore, certifying to SBA rather than simply reporting ownership in SAM.gov<sup>3</sup> would discourage fraudulent behavior. A critical component of certification is a site visit, and we know that SBA does not have the resources to perform site visits for every company entering the program today. We suggest that this is a role that can be filled by utilizing third party certifiers.

With respect to the definition of what qualifies a woman as economically disadvantaged (EDWOSB), we urge the Committee to change the definition of net worth. Before a woman is 59 ½, her retirement account/s do not count toward the net worth calculation. SBA regulations state that if the retirement account has early withdrawal penalties, it does not count toward the asset total. However, retirement funds lift those penalties at age 59 ½. Women who are above this age must count retirement funds—often resulting in disqualification for EDWOSB status, putting older female entrepreneurs at a disadvantage. We view this as discriminatory and a restriction that limits EDWOSB participation.

In addition, women-owned and minority-owned companies have in the definition of what constitutes a woman-owned or minority-owned firm a requirement that ownership must be “unconditional,” leading to a lack of investment in these firms. Given the size of contracts, this

---

<sup>3</sup> The System for Award Management (SAM) is an official website of the U.S. government.

is a stumbling block that should be removed. We support H.R. 3633, the *Women and Minority Equity Act of 2019* and its Senate counterpart, S.1981, which would allow for investment in women- and minority- owned firms.

The last contracting challenge we want to raise is the problem of small business growth. We would like to thank this Committee for passing the "Small Business Runway Extension Act" last year. Companies are eagerly awaiting its implementation by the SBA. Giving companies the ability to count an average of five years of revenue instead of the current three years to determine size will give them a longer time period to progress from small to midsize businesses. This new law will greatly assist businesses experiencing growth in the federal marketplace. However, many businesses are in limbo while waiting on the SBA to start its rulemaking, including federal agencies that are in the process of structuring contracting vehicles. WIPP urges the Committee to continue pressuring and holding the SBA accountable in order to expedite this process.

When we think about business growth, diversifying into public sector contracting should be an option. Given the complexities and barriers that exist for entry into this market, we believe utilization of the women's procurement program can help women business owners become successful federal contractors. However, we would note that the government has only met its 5% goal of contracting with women once. We urge the Committee to take steps to make this program a priority, thus assisting women in business success.