

PATHWAYS TO PROCUREMENT INNOVATION

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
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PATHWAYS TO PROCUREMENT INNOVATION

THURSDAY, MAY 12, 2022

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Gary Peters, Chairman of the Committee, presiding.

Present: Senators Peters, Carper, Hassan, Sinema, Ossoff, Portman, Scott, and Hawley.

OPENING STATEMENT OF CHAIRMAN PETERS¹

Chairman PETERS. The Committee will come to order.

First I would like to thank our witnesses for joining us here today. Today's hearing will examine the state of Federal Procurement, consider ways to boost innovation in the procurement process, and address challenges that have put a tremendous strain on Federal contracting.

A reliable and consistent procurement process is the key to ensuring that the Federal Government can effectively deliver its services to all Americans.

Federal agencies depend on procurement professionals to place contracts efficiently, to ensure that government needs are being met, and that taxpayer dollars are being used effectively. But we also need a process that is innovative and a process that is nimble enough to adapt to changing needs and circumstances. In recent years, the amount of Federal dollars spent on contracts has steadily increased, driven in part by the need to acquire new technology, such as software, cloud computing, cybersecurity protections, and artificial intelligence (AI), products and services that we can only expect to become even more in demand as we move forward.

At the same time, we face several challenges that have made the procurement process both difficult to manage, and difficult to navigate for companies hoping to do business with the Federal Government. These challenges include a shortage of procurement professionals, particularly those with expertise related to emerging technologies, along with steep barriers for new companies seeking their first Federal contract, and a diminishing domestic industrial base that can support the government's needs and requirements.

Right now, procurement professionals are retiring at a higher rate than they can be replaced, which leaves few experienced staff

¹ The prepared statement of Senator Peters appears in the Appendix on page 23.

available to train new recruits in the contracting field, and even fewer staff with the expertise and training needed to make increasingly complex technology purchases.

I was pleased to work with Ranking Member Portman on bipartisan legislation to create a training program to help Federal employees responsible for purchasing and managing artificial intelligence technologies better understand their capabilities and their potential risks.

But it is clear there is more we must do to ensure that government is at the cutting edge of new developments and that taxpayers are getting the most out of their hard-earned tax dollars.

Frequently, agencies are challenged to work at the “speed of relevance” of the technology that they buy, and procurements that take years to complete cannot keep pace with the speed of technological developments. This leaves agencies with technology that is new to them but may already be obsolete for the job at hand.

The pool of Federal contractors is also shrinking, particularly with regard to new and small companies. A recent Government Accountability Office (GAO) study of the Department of Defense (DOD) contracting found that, while DOD contracts with small businesses increased by 15 percent, the number of small businesses awarded those contracts decreased by almost half.

A July 2021 Bipartisan Policy Center report noted similar concerns, with unique barriers that small businesses in particular face when trying to enter the Federal contracting process.

New, small firms are a critical component of our industrial base, pioneering new innovations, strengthening the resiliency of the domestic supply chains, and creating good-paying jobs in communities across our country.

I was proud to advance bipartisan legislation through this Committee that was signed into law earlier this year, called the Promoting Rigorous and Innovative Cost Efficiencies (PRICE) Act, which ensures that small and disadvantaged business owners are given a fair opportunity to compete for Federal contracts and continue to grow their companies.

Today, I am very pleased to welcome a talented group of experts who can help us identify more effective solutions to address these ongoing challenges, and ensure that the Federal Government is able to better serve the American people.

Thank you to the three of you for being here. We look forward to this discussion.

Ranking Member Portman, you are recognized for your opening comments.

OPENING STATEMENT OF SENATOR PORTMAN¹

Senator PORTMAN. Thank you, Mr. Chairman. I appreciate the witnesses as well, and particularly Ms. Correa, thank you for your many years of service to the Department of Homeland Security (DHS). You were there at the inception and congratulations on your retirement.

The United States government spends a lot of money each year from taxpayers on contracts for goods and services. In 2020, that

¹ The prepared statement of Senator Portman appears in the Appendix on page 25.

was about \$665 billion, a 50 percent increase from just 2015. Some of this increase was due to the coronavirus disease 2019 (COVID-19)—we understand that—but not all of it. We have to wait and see what the contracting outcomes will be for this year as Federal agencies contend with skyrocketing inflation, because it is likely that drive the numbers up further. Procurement officials also face a lot of other major challenges in the areas of cybersecurity, which this Committee has spent a lot of time on, and also workforce, and the need to get more procurement officials into the government.

I think we have to focus today on another issue which is “Buy American”, because that is where this Committee has taken a lead. We have to do what we can do to protect American jobs, and that starts by ensuring that tax dollars spent on American government procurement is not used to create jobs overseas when it can be used to create jobs here.

I am grateful that one area that remains bipartisan is this “Buy American” and Made in America approach. It has been the law for nearly a century, but Federal agencies have, in my view, granted too many waivers to “Buy American”. Under current law Federal agencies may use domestic content waivers to purchase goods or services from foreign companies only in very limited circumstances, for example, when there is no American-made product available or it will significantly increase the cost. Federal agencies, however, in my view, overuse this waiver authority and until recently there was not an easily accessible, governmentwide system tracking the use and the abuse of these waivers. I am pleased we have made progress on that.

The bipartisan BuyAmerican.gov Act is now law. That is my legislation with Senator Stabenow, which was part of the infrastructure bill, and the Administration has issued an Executive Order (EO) creating this public website, MadeinAmerica.gov. I am pleased to see that, which will help by, among other things, better identifying opportunities for American companies to be able to contract with the government. It mandates that any Federal agency requesting a waiver to Made in America requirements to publicly submit it for everyone to see. There may be American manufacturers unknown to the government that can meet these needs, and that is what this website will be helpful to provide. That transparency is good for American jobs.

I also was pleased to work with Chairman Peters on something called “Build America, Buy America.” It is a title of the recently passed infrastructure bill as well. That title updated “Buy American” requirements to ensure all the money spent on infrastructure goes to American manufacturing and American workers, American steel as an example, which is made in Ohio. We also included the Make PPE in America Act part of that legislation. That requires personal protective equipment (PPE) critical to responding to a public health crisis here at home is made in America. When we talked to PPE manufacturers about re-shoring this production to America, the biggest thing we heard was we need long-term contracts to be able to make the investments, and that is in that legislation. The multi-year contracts as required in this legislation will give them the certainty they need to make these investments in the United States.

Having passed all these laws, we might just say 2021 was the “Year of Buy American”. These are really historic changes, particularly in the infrastructure bill, and this Committee should be proud of the work it has done on a bipartisan basis to improve these programs. Again, I thank the witnesses for being here. We look forward to your comments today and your ideas on improving the Federal procurement system further and making the government a smarter buyer on behalf of the American people.

Chairman PETERS. Thank you, Ranking Member Portman.

It is the practice to the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses, so if each of our witnesses would please stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. CORREA. I do.

Mr. SCHNEIDER. I do.

Ms. SULLIVAN. I do.

Chairman PETERS. Thank you. You may be seated.

Our first witness is Soraya Correa. Ms. Correa currently serves as President and Chief Executive Officer (CEO) of Soraya Correa & Associates, LLC, and was the former Chief Procurement Officer at the Department of Homeland Security. While at DHS, Ms. Correa was recognized for her advancement of acquisition innovation through the creation of the Procurement Innovation Lab (PIL), now regarded as a model within government. She has also served more than 40 years in Federal services at agencies such as the Naval Sea Systems Command (NAVSEA), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), and DHS since its very inception. She was awarded the Presidential Rank Award for Distinguished Service in 2018, and has spoken widely on acquisition topics, including acquisition reform and securing the supply chain.

Welcome, Ms. Correa. It is great to have you here. You may proceed with your opening remarks.

TESTIMONY OF SORAYA CORREA,¹ PRESIDENT AND CHIEF EXECUTIVE OFFICER, SORAYA CORREA & ASSOCIATES, LLC

Ms. CORREA. Sir, thank you. Good morning, Chairman Peters, Ranking Member Portman, and other distinguished Members of the Committee. I appreciate the opportunity to appear before you today to discuss procurement innovation. After over 40 years of dedicated Federal service in the acquisition profession I retired in July 2021, as the Chief Procurement Officer (CPO) and Senior Procurement Executive at the Department of Homeland Security. My career spanned several Federal agencies and positions as both a procurement and program official.

Today I operate a small business supporting the acquisition process through the advice and consultation to professional associations, industry, and academia. My commitment to the profession and the improvement of the procurement process is demonstrated through the programs and initiative I implemented at DHS.

¹ The prepared statement of Ms. Correa appears in the Appendix on page 27.

Speak with any acquisition leader and they will highlight the challenge of recruiting, hiring, and retaining a well-trained and experienced workforce. To address the challenge, the Federal Government needs to invest in the growth and development of the acquisition workforce. By that I mean create programs and initiatives to promote the profession, deliver the right training at the right time, and ensure career paths are clear.

One area where we can improve is in creating consistency across the profession when it comes to certification standards and promoting the use of a common language for the profession. By doing so we can make acquisition careers more transferrable between government and industry and as a result grow the profession. I believe that the use of a common language will also make it easier for academic institutions to offer degree programs and for individuals to understand and appreciate the profession.

However, certification and training is not enough. We need to develop the soft skills and provide on-the-job learning opportunities. While this is nothing new, I believe that today's acquisition professional needs to know how to communicate, collaborate, and cooperate with others and they need to be inquisitive, risk tolerant, and decisive. The best way to gain these skills is through on-the-job training where they can learn by doing.

The establishment of intern programs is one of the many ways in which agencies can develop and grow their workforce while simultaneously providing technical, interpersonal, and leadership training. At DHS we established the Acquisition Professionals Career Program (APCP) to attract, train, and hire acquisition professionals. We also created a mentoring program for procurement personnel. Finally, we encouraged rotational job assignments and participation in specialized training and certification programs such as the Digital Information Technology Acquisition Professionals (DITAP) Program. Such initiatives create an environment where individuals feel appreciated and valued.

I established the DHS Procurement Innovation Lab to inspire and motivate the acquisition workforce to put forth ideas on how we could simplify the procurement process, enhance outcomes, and ensure a more efficient and effective experience for industry and government. My goal was not to seek changes to statute or regulation but to identify and use all the flexibilities available in the Federal acquisition regulation. Our process was designed to test the innovation or idea and share what we learned across the acquisition community.

Since then, several agencies have created procurement innovation organizations. Many of the innovative practices and techniques developed by the PIL and other agencies are found on the Periodic Table of Acquisition Innovations (PTAI), which is hosted on the Federal Acquisition Institute (FAI) website. Encouraging organizations to promote procurement innovation and sharing what they learn is essential to improving the process.

Several agencies are also using artificial intelligence, robotic process automation, and other technologies to promote efficiency in procurement processes and enhance the customer experience. Such efforts need to be encouraged and shared across the Federal agencies.

While at DHS I implemented discussion forums for traditional and non-traditional contractors to learn about DHS and share with us technologies, approaches, and innovations. Two of the most popular were the Strategic Industry Conversation and the Reverse Industry Day. At the Strategic Industry Conversation, officials shared with industry the challenges and opportunities that lay ahead. The Reverse Industry Day was a unique forum for industry to educate us on their business practices. Topics included what goes into preparing a proposal, why do companies protest, and how to buy certain technologies.

These events provide information and generate ideas for improving processes and removing barriers to competition. I recommend we encourage agencies to create or participate in such events.

In addition to exploring the flexibilities in the Federal Acquisition Regulatory (FAR), at DHS we had success in using special procurement authorities, including other transaction authority and the Commercial Solutions Opening Pilot (CSOP) program, to acquire innovative technologies and solutions. These authorities provide greater flexibility in the drafting of the contractual agreement since they are not subject to the FAR and enable organizations to acquire products and services from new or non-traditional contractors with specialized knowledge and expertise. I ask that you consider making such authorities permanent and expand these authorities for use by the Chief Financial Officer (CFO) Act agencies.

Thank you again for the opportunity to appear before you today. I remain committed to the success of our Federal Government and the acquisition profession. I take this opportunity to express appreciation for my colleagues in government, industry, and academia, and a special thank you to the Committee for seeking solutions and providing the support this profession deserves.

I look forward to your questions.

Chairman PETERS. Thank you, Ms. Correa, for your comments.

Our next witness is Grant Schneider. Mr. Schneider currently serves as the Senior Director of Cybersecurity Services at Venable LLP, and served as the former U.S. Chief Information Security Officer (CISO) based out of the White House. Mr. Schneider led the establishment of the Federal Acquisition Security Council (FASC), an interagency body responsible for overseeing information and communications technology, supply chain risk management for the Federal Government as its first chair. He also held positions leading cybersecurity at the National Security Council (NSC), and acquisition-related positions in information technology (IT) resource management at the Defense Intelligence Agency (DIA).

Mr. Schneider, welcome to the Committee. You may proceed with your opening remarks.

TESTIMONY OF GRANT M. SCHNEIDER,¹ SENIOR DIRECTOR OF CYBERSECURITY SERVICES, VENABLE LLP

Mr. SCHNEIDER. Thank you very much. Chairman Peters, Ranking Member Portman, Members of the Committee and your staff, thank you for the privilege to appear before you today.

¹ The prepared statement of Mr. Schneider appears in the Appendix on page 31.

As mentioned, I have spent my entire 30-year career focused on our nation's security. This includes over 20 years at the Defense Intelligence Agency, seven of which as the Chief Information Officer (CIO). I then spent six years at the Executive Office of the President (EOP), including serving as a Senior Director for Cybersecurity Policy on the National Security Council staff, and most recently as the Federal Chief Information Security Officer.

For the past 20 months I have been a Senior Director of Community Services at the law firm Venable, where I help our clients, both large and small companies, from across all sectors, enhance their cybersecurity programs through the development and implementation of risk management strategies, as well as assisting with the preparation, response, and recovery from cybersecurity incidents, including ransomware.

I also have helped many clients who are struggling to navigate the acquisition and compliance regimes necessary to do business with the Federal Government. I want to thank the Committee for taking up the important issues related to the timely acquisition of goods and services by the government.

My first exposure to procurement was in the mid 1990s, when I was a GS-8 or—9. I was the Defense Intelligence Agency's representative to a global contract for IT services to support the defense intelligence community (IC). I met the Air Force (USAF) representative, who was a colleague and would-be mentor.

One day we were working the program and I made the comment that there was something in the contract that gave us great leverage over the contractor and it was going to be a great deal for the government. The Air Force representative looked at me and said, "Look, son. The point of the contract is to create an environment where the government and industry can work together to accomplish and solve agency mission needs. It is not there for us to beat each other over the head about."

Through that program I experienced the mission success possible from a partnership between contracting officers, technologists, and the vendors. Unfortunately, many of the people I have met throughout my career still view government contracts as an adversarial tool rather than a collaborative opportunity.

Federal agencies, like nearly all organizations today, are dependent on technology to develop and deliver critical services in support of our Nation. While these digital enhancements increase productivity, convenience, and access to services, they also present opportunities for malicious cyber actors who have demonstrated a willingness to exploit any system to achieve their objectives.

This evolution to a more digital experience means Federal information technology investments are more critical than ever before, and as previously mentioned, the Federal Government invests a lot of money in information technology, over \$90 billion a year. Most of that money is spent on goods and services acquired through Federal procurement processes. Federal agencies need agility within the procurement system to leverage the innovative tools, technologies, and services available from the private sector.

Here are some actions I think government can take to enhance procurement innovation.

One, provide greater flexibilities for contracting officers to prioritize the mission needs of the government during procurement. This includes recognizing that time to market is a key metric for every acquisition.

Two, establish partnerships between technology and acquisition professionals. I recommend creating joint teams of acquisition and technology individuals who can focus on mission delivery to address agencies' most pressing technology procurement needs.

Three, develop procurement vehicles that allow for technical refresh throughout their lifecycle so new technologies can be made available to agencies without necessitating new procurement processes.

Four, consider supply chain risks associated with goods and services in technology acquisitions. This includes the quality and provenance of the items being procured as well as the trustworthiness of the provider. Additionally, the government should take steps to ensure there is a trusted marketplace available for public and private sector acquisitions.

Fifth, drive consistent compliance and security requirements across the Department of Defense and Federal civilian agencies' acquisition processes. DOD and civilian agencies are seeking many of the same innovative commodity technologies available in the private sector. However, divergence in compliance requirements increases costs to the private sector to develop and provide solutions to both communities.

Thank you again for the opportunity to speak with you today, and I look forward to your questions.

Chairman PETERS. Thank you, Mr. Schneider.

Our final witness is Elizabeth Sullivan. Ms. Sullivan currently serves as President of Madison Services Group Inc. (MSGI), a government relations firm focusing on government contracting, and leads various groups representing both small and midsize contractors.

She recently led the formation of the Secure Supply Chain Consortium, a group of small and midsize Federal contractors that advise decisionmakers on difficult supply chain security problems such as recent efforts to restrict procurement of certain information and telecommunications equipment from China and the Department of Defense's Cybersecurity Maturity Model certification.

Ms. Sullivan, welcome to our Committee. You may proceed with your opening remarks.

TESTIMONY OF ELIZABETH SULLIVAN,¹ PRESIDENT, MADISON SERVICES GROUP, INC.

Ms. SULLIVAN. Thank you. Chair Peters, Ranking Member Portman, and members of the Committee, thank you for the opportunity to testify today. My name is Elizabeth Sullivan and I am President of Madison Services Group. MSGI advocates on behalf of many segments of the small and midsize Federal contracting community. I am here today to discuss a key component of our procurement system, small businesses.

¹ The prepared statement of Ms. Sullivan appears in the Appendix on page 37.

At MSGI, we believe practical business problems require practical policy solutions. I would like to thank the Chair for spearheading the bipartisan PRICE Act. This new law addresses the need for modernizing the Federal acquisition system and will be transformative for small business contractors around the country. It tackles one of the barriers to procurement innovation, effective utilization of small businesses.

Let me say up front a common misconception is that small companies believe they will be given awards by the Federal Government. This is simply not true. Small businesses just want a fair shot to compete.

The Federal procurement system adds additional layers of complexity. This is not to say that all acquisition regulations are problematic. However, a number of them should be streamlined. Challenges arise not just from the content of the rules but how the rules are promulgated. For example, the time lapse between FAR Council action and final rules published the Small Business Administration (SBA) can span up to seven or more years, causing confusion for all involved. I urge this Committee to require the FAR Council to issue its rulemaking simultaneously with the SBA.

The Committee has expressed concern about the health of the industrial base, for good reason. On average, the Federal market loses five percent of small business entrants every fiscal year. Small companies are not just valuable prime contractors but often serve as subcontractors to large businesses. Since the government does not have a relationship with subcontractors these companies have very little leverage to remedy any problems that arise. Further, category management has accelerated the decline in diversity of vendors, with large dollar amounts held only by a few companies. Nearly one in every four Federal contract dollars is spent through large Multiple Award Contracts.

As the focus of government spending shifts more toward innovation, small IT vendors play an important part in this ecosystem. Hampering their success, outdated North American Industry Classification System (NAICS) codes inhibit their ability to win work. In addition, how agencies determine best value can also prove to be problematic for small businesses. Best value does not always mean lowest price, and despite past congressional efforts, agencies are still using Lowest Price Technically Acceptable (LPTA) for many contracts.

Small business offices at Federal agencies play an outsized role in supporting small business participation. Our experience is that they are under-resourced and cannot give individual attention to all the small businesses that request it. Yet agencies have been tasked with increasing the number of new contractors.

Additionally, there is not enough attention given to understanding small business programs across government. I know first-hand that many women-owned small businesses (WOSB) spend a great deal of time explaining the WOSB program to contracting officers.

Speaking of new entrants, the government relies on strong past performance when awarding a contract. Many times these requirements can result in a chicken-and-egg situation. The company can

only get past performance by performing on the contract but cannot be awarded a contract unless they have past performance.

A recent attempt at solving this issue was proposed on the new GSA Polaris procurement. The solicitation allowed small companies to rely on the past performance of the large company on their team. While good for new entrants, on the flip side allowing this use of past performance could also hurt more mature small businesses.

I would be remiss if I did not point out the uncertainty in cybersecurity requirements that loom over small businesses. With the constantly evolving cyber standards for government contractors it can be challenging to remain compliant. I would encourage this Committee to evaluate civilian agency requirements, ensuring that they do not conflict with new DOD standards.

In conclusion, small businesses are only asking for a fair chance to compete. Strengthening agency focus on small business programs, eliminating rulemaking discrepancies, shifting the buying environment away from category management, and clarifying governmentwide cybersecurity requirements builds resiliency of the industrial base.

The topic today is of utmost importance to continuing COVID recovery and securing a sustainable, innovation acquisition environment.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

Chairman PETERS. Thank you, Ms. Sullivan. Thank you for your opening comments. Actually I want to pick up on the comment you made with small businesses and ask a question of all three of you. I will have Ms. Correa start and then you can elaborate more, as the final word in this question.

I hear it all the time from small businesses. I was just at a forum at Wayne State University earlier this week, and particularly with minority businesses they are saying, "We cannot get contracts because we have to first show that we have done well with a contract, that we cannot get, so it is impossible to actually get one." I think all of you agree that there is incredible innovation and dynamism in our small business sector and we want to help those businesses grow and prosper.

My question to each of, and we will let you have the last word, Ms. Sullivan, because you brought up this issue in your opening comments, to just elaborate on, how can we remove this barrier? How can we expand opportunities for small businesses to get these contracts and to stabilize their business and provide great services to the Federal Government?

Ms. CORREA. It is all in the evaluation, sir, and that is a great question. It is all in the evaluation of the proposals. There is an inherent desire to try to rely on past performance and experience. What I have always said it experience is good, depending on what it is you need it for. If you need a brain surgeon you probably want them to have experience. If you are buying technology, it is probably not going to have a lot of experience because technology is changing on a recurring basis.

Instead of focusing so much on experience and past performance I have always recommended let us test them. Let us bring them

in, have them demonstrate what they do. Have them come talk to us, similar to what you do with interviewing a person. A lot of the techniques that we develop through the Procurement Innovation Lab were designed to do just that, to create greater confidence in the evaluators by having the opportunity to meet with companies, talk to them, perhaps test them, or have them come in and demonstrate how they would accomplish the work in the solicitation.

Chairman PETERS. Thank you. Mr. Schneider.

Mr. SCHNEIDER. Yes, I think in addition to the test—I love that idea—is recognizing past performance done in a commercial setting. So past performance in government is not necessarily unique, and I agree it is a lot about the evaluation, and often the criteria is written so specific that you have to have had past performance, perhaps even at a bureau level within an agency, in order to even be considered for the acquisition, whereas past performance in commercial settings would also be perfect acceptable.

Ms. SULLIVAN. I think that builds off the idea that we should not confuse new entrants in the Federal market with new companies. I think that is a lot of the time what the acquisition workforce thinks of with small businesses—oh, they must have just started the businesses. A lot of these are very successful commercial companies.

I do think, to address what you had said, Senator, having goals that are internal to the agency, to kind of move the needle for new entrants, that can be a way to incentivize agencies to utilize these new entrants that may not have the past performance. Also I think the Small Business Administration district offices could be really powerful feeders for non-traditional contractors that come to them and connect them to different agencies that might have those specific mission needs that need to be met.

Chairman PETERS. Thank you. Ms. Correa, I understand that recruiting and retention of procurement staff is clearly a chief concern among Federal agencies all across the board. With procurements becoming ever more complex we need trained, we need experienced workforce, and I understand agencies are continually recruiting contracting officers from each other in an attempt to maintain staffing. A little bit of poaching going on back and forth.

My question to you is how can the Federal Government ensure that it has enough trained professionals? What do we need to be doing now, and what do we need to be doing differently?

Ms. CORREA. Thank you. That is a magnificent question. It is something that I am passionate about. First, we have to put the right leadership in place, people who really understand the profession, understand what makes people tick, and are willing to support their individuals, that are supposed to champion this workforce and enable to take the right risks and do the right thing.

But the most important thing that I would emphasize is helping people understand what this profession is really about. People do not always come into this profession because what they read about is the bad-news stories that are out there in the press. They do not hear about the good news, the things that we do very well, including the lives that we save through the procurements that we make, the things that we do to enable the mission. We talk about procurement in terms of contracting and administrative processes, and we

do not talk about the fact that what procurement does is enable the mission. We buy the products and services that our first responders, our warfighters, and others use. We need to learn how to talk to people.

The other thing that I would say is we have to get into the colleges, the universities, and I daresay, high schools, and start talking about the profession. We need to bring in people at the very beginning, help them see the career path and understand what this mission is.

I came into the government as a clerk typist, and I took my first procurement job at the Department of Navy, and I was hooked. I was hooked because my job was diving and salvage, and it was about people's lives and the livelihood of people, and I have never forgotten what mission is about. We need to talk that way. We need to promote the right leadership in the organization, and we need to create programs.

I talked about intern programs. Intern programs are a great way to bring people on board and educate them. I do think we need to cross-train people. It is important. I took the opportunity to go into the program side, program management, and work in IT for a while, so I understand what IT is and how they think and what they look at and what program officials think.

In short, I would say we have to invest in the profession, and I do mean invest—invest in training, invest in recruitment, but most importantly we have got to get the right leaders in place to go out there and talk to people and bring them.

By the way, it was not a little bit of poaching, it was a lot of poaching. Just thought I would mention that.

Chairman PETERS. Good. Thanks for that clarification there.

Let me pick up on the cross-training aspect. Mr. Schneider, with your own experience has a technical expert working on the procurement team, what are your thoughts about cross-training? Should we be doing more of that IT knowledge with folks with procurement backgrounds?

Mr. SCHNEIDER. Yes. I think we should be realistic in what that is going to get us. I think, in general, it is going to get us awareness, and it is going to help people from each community who are cross-trained kind of issue spot and recognize issues and be able to adapt and react to them.

But I think we really need the collaborative teams, working together, both focused on the mission outcomes that Soraya talked about, to really be able to have that interest in the agency outcomes and be able to learn from each other at a more organic level than kind of awareness training will do.

Chairman PETERS. Great. Thank you. I am going to need to step away briefly. I have an Senate Armed Services Committee (SASC) going on downstairs where I will be asking some questions. I will temporarily pass the gavel over to Senator Carper. But before Senator Carper gets that gavel I will recognize Ranking Member Portman for his questions.

Senator PORTMAN. Thank goodness, because you never know once Carper gets that gavel what he might do with it. [Laughter.]

I have seen him in action.

Thank you all again for your work on the procurement front. Not always, as Ms. Correa kind of suggested, the best image people think procurement and sometimes their eyes kind of glaze over. I taught a course in procurement when I left the Office of Management and Budget (OMB), and many of my students' eyes sort of glazed over.

But by the end of the course I think they understood that it really is essential, both for the proper use of our taxpayer dollars and also you can do amazing things for the small businesses, in particular, when given an opportunity to work with government. Obviously we want the best, best for the services that we provide.

One of the programs that I have concerns about is called Federal Risk and Authorization Management Program (FedRAMP). It is basically kind of a preclearance program for cloud services, and Mr. Schneider, you know a lot about this. I think it has weaknesses that make it vulnerable to foreign-based threats targeting our cloud systems. That would include China and Russia, by the way, in terms of some of these threats. The Senate unanimously passed our bill called Strengthening American Cybersecurity Act, which would address some of these issues.

Mr. Schneider, have you looked at that legislation and do you think it would be helpful?

Mr. SCHNEIDER. I am not intimately familiar with the legislation. However, I certainly agree with you that the FedRAMP program has some very good intentions. It certainly has some room for improvement there, and I think that we have to consider supply chain risk management in all our acquisitions, whether it is for cloud services or any other services that we are getting, and really come up with consistent ways that we can evaluate a vendor, again for quality of product and trustworthiness of the vendor themselves and potentially any legal oversight that their host country could put upon them.

Senator PORTMAN. I think it is really important that we have these reforms to protect these cloud-based systems, and my hope is that the House will take it up and it be properly implemented.

What do GSA and FedRAMP programs need to do to attract small and innovative technology companies to become FedRAMP certified and to provide services to the Federal Government?

Mr. SCHNEIDER. I think the struggle with small businesses and working to help some small businesses go through that process, it is a very intensive and expensive process to get through that has a lot of compliance. I think the Program Office at GSA needs to be bigger, it needs to be better resourced to be able to work with more companies. I think they need to seek ways to reduce the burden and reduce the amount of paperwork associated.

I think it also goes to being able to evaluate companies for their security outcomes as opposed to just for their security paperwork. The processes, they certainly need to have processes in place. But we need more flexibility on how you can meet the security outcomes for all businesses, small and large.

Senator PORTMAN. That is one of our goals here, and my hope is that this legislation can pass to help protect the cloud-based services but also we can expand the number of companies that are innovative technology companies that will provide that service.

On the Buy American laws, we talked about it in my opening Statement quite a bit, but bottom line is we are spending more and more money on goods being manufactured around the country, but also \$34 billion was spent on goods manufactured by foreign firms in the last five years. The Department of Defense the largest purchaser of manufactured goods in the world, has spent over \$200 billion on foreign products since 2007. Of course, we have lost manufacturing jobs during that time period.

Ms. Correa, talk about that a little bit if you would, and maybe one thing that would be interesting, I think, for people to hear is what steps does a contracting officer go through in determining whether or not to apply for a waiver of our Buy American laws?

Ms. CORREA. Sure. Certainly. Thank you. Thank you for the question.

The Buy American Act is a little bit challenging because you have to look at it in conjunction with other legislation such as the Trade Agreements Act and a couple of other legislations.

Generally speaking, what a contracting officer has to do is, first of all, they have to make sure they are incorporating the right clauses in the contract, but they also have to look at the product and determine if that product is available by American manufacturers. That is done in a number of ways. They can publish it out in the Federal Biz Opps (FedBizOpps), the publication that tells contractors that we are interested in certain products and services.

Typically what agencies do on an annual basis is identify all those products that they buy from foreign manufacturers and publish them so that companies out there can tell us if they can make those products or if they are interested in selling those products to the government.

What I have seen is that typically when certain agencies are buying things like aircraft parts, parts of ships, it depends what engine they bought, and if that engine was bought by a foreign manufacturer then you are probably going to have to buy the parts from that manufacturer. That is what I have typically seen.

At DHS, one of the things that I did to improve compliance with Buy American Act—and I did this probably about six years ago, when I was well into the job—was I raised the threshold for review. Instead of leaving it at the head of contracting level it came to my level to review any waivers for Buy American Act. That seemed to cut down the number of the waivers, but it also made us more conscious of what people were buying and how they were buying.

But generally speaking the process is they do have to look to see if there are American manufacturers out there. They do have to announce that they intend to buy this product from Company XYZ, whoever they may be, so that companies can come in and tell us that they manufacture the product.

I do want to add that I think some of the recent efforts that OMB has undertaken to take a closer look at Buy American compliance, I think those processes will work. I think compliance varies by agencies, based on what they buy and how they buy.

Senator PORTMAN. Yes. As I said earlier, 2021 was sort of Buy America year. We had historic reforms to Buy America Act and expanding it, and again, I am pleased that the Executive Order has

been issued with regard to BuyAmerica.gov website, which is kind of a clearinghouse, as you say. That is needed to let people know both on the private side what the opportunities are but also to let government contracting officers and procurement officers know that there is a business out there that can provide this, and sometimes that is lost.

Do you think that the transparency and the clearinghouse element of BuyAmerica.gov can be successful in expanding the use of U.S. manufacturers?

Ms. CORREA. Yes, I do believe that it can be successful but I also think we have to do something a little bit more practical, and that is we need to get out there and talk to industry. We need to go out and understand why industry perhaps is not interested in selling certain products or manufacturing certain products in support of government needs.

A lot of times it has to do with the lack of guarantees in the contracts. I think Elizabeth mentioned that in her testimony, that sometimes these contracts, the way they are written, the companies does not know when they are going to recover their costs, if they are going to recover their costs. There are upfront investments the companies have to make if they are going to go into the manufacturing of certain products. I think that is extremely important.

This all ties back to something that Grant said, and that is we have got to build cohesive teams that plan the procurement properly to think about all these factors, whether it is cybersecurity, FedRAMP certification, Buy American. When you build that team up front and you put it on the front end of the question, you are going to write a much better solicitation, you are going to engage in a much better procurement process, and you are probably going to be bringing industry in a lot earlier to talk about what you are thinking about doing so they can get some input.

I am a huge advocate of the coordinated teams, but you have to get them up front.

Senator PORTMAN. Expediting the process so that it moves more quickly, because we are moving at faster and faster speeds in our economy, and particularly with inflation have a real challenge right now to ensure we are spending that taxpayer dollar most efficiently.

Senator Carper, when I taught this procurement class it was at the Ohio State University (OSU), at the Glenn School, now Glenn College, your alma mater, and named after the former Chairman of this Committee. Mr. Chairman.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER [presiding.] Ohio. I am a Navy Reserve Officers' Training Corps (ROTC) midshipman, Ohio State graduate. I graduated in 1968, at the height of the Vietnam War, and headed over there to do three tours later on. I am happy to be here to serve with Senator Portman and our colleagues.

This first question is sort of light-hearted. I do remind you all that you are under oath.

Ms. Correa, 40 years or more in service, and Mr. Schneider, I think 30 years or more. Was your hiring all those years ago in violation of child labor laws of this country? [Laughter.]

Ms. CORREA. I wish.

Mr. SCHNEIDER. Sadly not.

Senator CARPER. OK. All right.

First of all, this is a great hearing. You are wonderful to come and join us.

On a panel like this, where sometimes we have witnesses where it is an adversarial environment and we just kind of go at it with each other, but that is not the case here. I think there is a fair amount of consensus.

I would just start with you, Ms. Correa. Give us one or two examples where you think this panel actually agrees on ideas that we really ought to take to heart. Would you give us one or two great ideas for consensus?

Ms. CORREA. I believe in investing in the acquisition workforce. That is the most important thing. If we do not invest in the people you cannot fix the process. The people will fix the process.

I stood up the Procurement Innovation Lab. I think that is the right way to go. What we have to do is develop these people so they become the kind of leaders that say, "We are going to champion what you do. We are going to stand with you and we are going to let you take certain risks, and we are going to support you." Understanding that when you take risks that means that we might fail once or twice. But failure can be a good thing because we learn from failure. We get up, we dust ourselves off, we figure it out, and try again.

That is what I encouraged in my office, and that is what I talked about, and I rewarded people who took risks, even when it did not go well. I gave them awards and I recognized them for trying something new.

The other thing that I would say is the authorities, the flexibilities in the Federal acquisition regulation. There are many there. We just have to understand them and we have to be able to interpret them. We have to learn to talk to one another. Often I hear procurement personnel say, "The lawyer would not let me do it." I never had a lawyer stop me from doing anything I wanted to do. I knew how to talk to them. I knew how to approach them and say, "Here is what we are trying to do. Get me there."

Senator CARPER. I like to say, "No" means find another way."

Ms. CORREA. Then the other thing that I did also was I stood up for the position that I was in. It was my job to ultimately make the decision. The lawyers are there to advise. Sometimes I was willing to take the risk, document the file on that risk, and move on.

I think these are the kinds of things that we need to be encouraging in the workforce. The partnerships with the program offices, I was very candid with my program offices when I thought they were trying to do something that was not going to work, but I tried to give them options, to understand what was available.

But the most important thing we can do is put the right leaders in, investment in this acquisition workforce, get them as young as we can. Look at me. I came in as a little kid—no, just kidding. But bring them in as young as we can. Let's go start talking to them at high school. Let them think about a career in acquisition. I think promoting a common lexicon, a common way of describing

the profession and what we do, so that industry and government can share in resources. There are a lot of brilliant people in industry that I brought into the government, and there are a lot of brilliant people in government that went out to industry, and I think that is an important thing to do.

Senator CARPER. Good. Thank you very much for all that.

Mr. Schneider, do you agree with anything that Ms. Correa has said?

Mr. SCHNEIDER. Yes. I really agree with that many flexibilities exist in the FAR today. Whenever people ask me about acquisition reform, and if you tell them you want a particular thing it probably exists. The challenge is, quite frankly, finding a contracting officer or a team who feels empowered to leverage and implement and use some of those flexibilities.

I think we need to talk to contracting officers and to the teams about their role with risk management as opposed to their personal liability if they decide to leverage one of those flexibilities and how they are going to have to explain it to an Inspector General (IG) or to GAO after the fact.

Some ability to go to their leadership, hopefully someone as wonderful as Soraya, who is going to support them and support their ability to focus on the mission needs I think is absolutely critical.

Senator CARPER. Good. Thanks. Ms. Sullivan, do you agree with anything that either of these two people have said?

Ms. SULLIVAN. I agree with both of my fellow panelists. I think that empowerment is really important, especially with respect to utilizing small businesses. DHS is a fantastic example of an agency who is willing to engage with small businesses, to use those innovative solutions, where a lot of times, agencies just will not.

I would say, on the use of other authorities, such as Other Transnational Authority (OTAs) that was mentioned, something that might be of interest is figuring out how are small businesses able to access consortia? Are there any barriers there? If Congress could look into that I think that would be really useful to help see if we can get more small businesses contracts via those flexible authorities.

Senator CARPER. All right. Thank you.

Let me go back to Mr. Schneider for this question, and I think I have time maybe for one more. As you know there is critical need—we have been talking about the need to modernize information technology systems across the Federal agencies. For as long as I have been here we have been talking about this, and to some extent doing it. It is important to both improve the security of our systems and to ensure that the Federal Government can serve the people we work for more effectively and more efficiently.

From your perspective, what are the greatest challenges? From your perspective, what are the greatest challenges to agencies and their components to successfully investing in technology modernization efforts?

Mr. SCHNEIDER. Senator, that is a great question, and I feel like I have been chasing that much of my career. To your point, I think there have been lots of successes. However, technology modernization is something we never achieve. It is something we are always going to be moving toward.

I think one of the opportunities we have today—and certainly as Senator Portman mentioned there are some risks with cloud capabilities and we need to understand the security risks there—as agencies move toward cloud technologies they are no longer buying the next decade’s legacy system. They are actually moving to a system where industry that has and brings a lot of capability and innovation, is going to do the evolution and the sustainment and the modernization of kind of the underlying technologies, and the government can work toward just having to modernize at more the application layer.

I think there are some opportunities moving forward, but it also is going to take agencies to make some tradeoffs and to decide to kill some systems that need to go away and should no longer continue to be sustained.

Senator CARPER. Part of what you said reminds me of the Preamble of the Constitution. “We the People, in order to form a more perfect union.” It does not say “perfect.” It says “more perfect.” The idea is that we realize we are always at places where we can do better, and the idea is to move toward that more perfect union, or more perfect approach to technology.

I think Senator Peters may be en route to the airport to fly back to Michigan, and so I get to chair this Committee now for the next several weeks. [Laughter.]

But I am happy to yield back to Senator Portman, for whatever he would like to ask.

Senator PORTMAN. Thank you, Mr. Chairman. You chair so many committees, I do not know if you would have time to chair another.

With regard to workforce, we talked earlier about the challenge that you are facing, and let us face it, pretty much every sector of our economy is facing it right now, the private sector and public sector. With unemployment at under three percent and competition for talented workers being more intense than ever, I am concerned that the Federal Government is going to have even a harder time hiring individuals with private sector experience to help the acquisition system work better, because I think it is very helpful to have the private sector coming in and helping our government to be able to recruit people who understand the needs on both sides of the table, the private sector of companies that we want to engage more in procurement and the government side.

My question to you would be this. What can we do to make sure that we are competitive? What could we do better? Ms. Correa, why don’t you start off since you have been looking at this question over many years, and you have seen times when it is easier and times when it is harder.

Ms. CORREA. That is a great question and I want to mention first the hiring process is painful, and I think you have heard that before from other sides of the house, from the human resource (HR) folks in government. We have to modernize our hiring process. It takes too long to hire people. I literally had to authorize overhires, meaning telling my folks to hire in excess of the budget, meaning go out and recruit people, because we know we are going to lose people. That way we have people sitting on the bench ready to come in.

I should not have to do that. I should be able to run a process where I can go and pick up people. I need a talent individual and I should be able to go and say, "Hey, Elizabeth, come join my team. Here is what you applied for. Let us look at this resume and let us get her on board." We do not move that fast. Even with direct hire authority—you will hear about direct hire authority—you have to go through a lot of rules and reports and statistics to justify using that authority that has been given to us.

I think therein lies the problem. We have to have a better process, but then again, I revert back to what I said earlier. We have to put the right leaders in place that know how to do this, that know how to motivate a workforce. When I came to the headquarters of Homeland Security to run one of the first offices that I ran, which was the Office of Procurement Operations, we had 60 people on board. I was authorized 250 people, and I needed to hire quickly. I got 250 people on board in less than two years, but that is because I marshaled the troops, and we went out there and recruited. But it is hard to do with the current processes that are in place.

Senator PORTMAN. I think that is a great point. We hear, in this Committee, despite some of the improvements we tried to make, like direct hiring—and by the way, some of it is agency by agency; I think it should be governmentwide—but we hear people telling this story about having found somebody talented and the person, after two or three weeks of waiting, gets an office from the private sector. The private sector says, "We will hire you tomorrow with benefits, ready to go," and they say, "I would love to join the government and have done some public service here but I cannot wait four, five, or six months. I have to move." I think that is a disadvantage that we have.

Senator Peters is now back and I will let me ask questions, but anybody, Ms. Sullivan or Mr. Schneider, any responses to the hiring dilemma?

Mr. SCHNEIDER. Yes. One thing I would like to add and really highlight something Soraya mentioned earlier, I think we also need more flexibility to have people move in and out of government in these rules. It is difficult for people, and we need good, strong ethics rules, but sometimes they are a barrier, for many government jobs but especially for contracting officers who get excluded from being able to work at lots of companies, or if they work at a company are excluded from working back in the government. I think we will be able to retain more people if we can allow them more flexibility to move back and forth between industry and government, and gain a whole bunch of expertise at the same time.

Ms. SULLIVAN. I would just add, if I can, that small business offices at agencies are under-resourced, and they are incredible tools to be able to get some new small businesses into the government, keep small businesses providing innovative products. So making sure that there are enough resources for those offices is incredibly important.

Ms. CORREA. May I add something to that——

Senator PORTMAN. You may.

Ms. CORREA [continuing]. Because Elizabeth raises a very important point. At DHS I think we were successful because we

partnered with our Office of Small and Disadvantaged Business Utilization, and I carved out positions from my staff to put into that office so that we could work in partnership to evolve our program. I think our program was successful because we had it properly resourced, and I probably had one of the larger Office of Small and Disadvantaged Business Utilization in government, including that it was staffed by a senior executive official.

I think that is a really important and valid point. Agencies need to focus a little bit more on their small business programs and how to bring in small businesses, and that starts with the right people talking to the small businesses.

Senator PORTMAN. Great. My final question is about Federal acquisition regulations. They are often added. They are rarely taken away. Mr. Schneider mentioned that a second ago with regard to one. New regulations are necessary but obsolete rules and regulations, it seems to me, have to be removed.

Ms. Sullivan, one of the strengths of our acquisition system is the presumption of competition, to get the best value, so people have to compete with one another, and that is a good thing. Based on your experience with small to midsize companies, what Federal rules or regulations make it difficult for these smaller companies to comply or compete when doing business with the Federal Government and what rules or regulations should be removed?

Ms. SULLIVAN. I think that clarity is always what small businesses are seeking in any rule or regulation. One of the issues that has been kind of plaguing the community for a long time, that I had mentioned in my opening remarks, is the time period from when the FAR Council issues a rule and the SBA issues a final rule. It can span many years, and the acquisition community often does not take SBA's final rules as what they should be, which is that they should be followed until it is in the FAR. It creates a ton of confusion and then even more regulations or more rules that have to show up after the fact because the rulemaking is not simultaneous.

Also I think the SBA Office of Advocacy did a nationwide tour a couple of years ago, I think, if I am remembering the timetable correct, and asked small businesses what regulations, including contractors, are really hindering them. It encouraged taking a look at that and what they found, because I know that they found specific ones that were problematic for small and obviously midsize companies as well.

Senator PORTMAN. Great. We will look for that. Our capable staff is already behind us, trying to find that online.

Thank you, Mr. Chairman. Thank you to the witnesses. Thanks for your service.

Chairman PETERS [presiding.] Thank you, Senator Portman.

Ms. Correa, the Government Ownership and Oversight of Data in Artificial Intelligence (GOOD AI) Act is legislation that I worked on with Ranking Member Portman which would create an artificial intelligence hygiene working group. This group of experts would create a means to ensure that Federal contractors are using AI properly for the benefit of the country and that the information collected through these technologies is not misused.

My question for you is what are your thoughts on developing additional contract requirements to ensure our systems are secure and that sensitive information is being protected?

Ms. CORREA. I never oppose contract requirements that are about protecting our information, protecting our country, and protecting our citizenry. However, we need to look at those rules carefully and how they are going to impact industry, because every time that we add rules in the Federal acquisition regulation we are imposing new requirements on companies, and they have to comply and they have to demonstrate compliance. We also create additional work for the contracting officer or that acquisition workforce, both from the program as well as the procurement side.

What I would say is we have to carefully look at these rules and make sure that we are looking at any other rules that are affected by this rule, because all too often we are also adding regulations without looking at what is already on the books, what are the compliance requirements that are already on the books.

But I am not opposed to any rules that protect our data, protect our people, and protect our government. I am totally in favor of that. I want to make sure that we do it right, that we are looking across the spectrum to see what else is out there.

Chairman PETERS. Mr. Schneider and Ms. Sullivan, do you have thoughts on this matter?

Mr. SCHNEIDER. I agree. I would like to see the working group, if they are going to propose new things that are needed they could also propose, to Senator Portman's question, something that needs to go away, but also there should be some requirement on them to be able to explain what is not available today within the regulations to achieve the outcome. They should first be looking for how do the current regulations meet the outcomes they are seeking and then look toward what new requirements might be necessary.

Ms. SULLIVAN. Mr. Schneider actually mentioned something I was going to say earlier, which is any new committee or any new regulations in the cybersecurity realm or securing our information, the regulations between DOD and civilian agencies need to make sure that they are talking to each. Because that has been a big problem for small businesses is there are different agencies making really good changes to their requirements but then they are not talking to each other. Then the compliance for each one gets confusing and time-consuming and expensive and does not result in better security for our contractors.

Chairman PETERS. Good.

Mr. Schneider, I would also, in closing here, just like you to speak more about the process that you mentioned in your opening statement that would allow technologies to be refreshed throughout their lifecycle without necessitating a new procurement. Would you expand on that, please?

Mr. SCHNEIDER. I think you mentioned this in the beginning, the fact that we get things that are maybe new to an agency but not new to the ecosystem, because of some of the procurement timelines that we have. We need agility inside the procurement process to be able to have procurements done quicker. The reality is those may never get to the timelines that we really want them to be able to acquire technologies on the timeline that agencies are

really going to want them and that the timelines technologies are being developed.

How do we add flexibilities into those procurement vehicles that allow vendors to come in and propose technical refreshes, build it more at maybe the capability versus the procurement vehicle at the capability level versus at the product level, so that new products can be brought in to support that capability as the products evolve over time, and for services as well.

Chairman PETERS. Ms. Correa, do you have some thoughts?

Ms. CORREA. No. I agree with what Grant is saying, that we do need to build that technical refresh capability, and we have done that before. It is not something new. It is how we do it. How do we build it in there so that it is agile and flexible and it is properly interpreted by the parties, because a lot of times that is what you really run into is how we are interpreting the rules and what we put into the contracts.

Chairman PETERS. Great. Thank you.

I would like to thank all of our witnesses here for participating in today's important discussion. I appreciate you taking the time and for your very thorough answers to the questions that we posed.

I think this conversation has given us a lot of information. It has given us some ideas on how we can continue to improve the procurement process, especially when it comes to expanding opportunities for businesses to work with the Federal Government, particularly small businesses, which is a priority for me and I think many of the Members on this Committee.

Also how do we keep pace with rapidly changing technology. The change we have seen will likely only accelerate in the years ahead and we definitely need to be nimble and creative in how we approach this problem. All three of you have given us some ideas and we would love to continue to work with you in the months ahead.

I want to thank Ranking Member Portman for holding this hearing with me. We all look forward to working together. This is a very bipartisan Committee that rolls up our sleeves and gets things done, and this is one of those areas where we need to do that. But we know that we are going to need to be talking to you on a regular basis in order to accomplish that.

The record for this hearing will remain open for 15 days, until 5 p.m. on May 27, 2022, for the submission of statements and questions for the record.

The hearing is now adjourned.

[Whereupon, at 11:21 a.m., the hearing was adjourned.]

A P P E N D I X

Chairman Peters Opening Statement As Prepared for Delivery Full Committee Hearing: Pathways to Procurement Innovation May 12, 2022

Today's hearing will examine the state of federal procurement, consider ways to boost innovation in the procurement process, and address challenges that have put a tremendous strain on federal contracting.

A reliable and consistent procurement process is key to ensuring that the federal government can effectively deliver its services to all Americans.

Federal agencies depend on procurement professionals to place contracts efficiently, to ensure that government needs are being met and that taxpayer dollars are being used effectively.

But we also need a process that is innovative and nimble enough to adapt to changing needs and circumstances.

In recent years, the amount of federal dollars spent on contracts has steadily increased, driven in part by the need to acquire new technology, such as software, cloud computing, cybersecurity protections, and artificial intelligence, products, and services that we can only expect to become even more in demand moving forward.

At the same time, we face several challenges that have made the procurement process both difficult to manage, and difficult to navigate for companies hoping to do business with the federal government.

Those challenges include a shortage of procurement professionals, particularly those with expertise related to emerging technologies, along with steep barriers for new companies seeking their first federal contract, and a diminishing domestic industrial base that can support the government's needs and requirements.

Right now, procurement professionals are retiring at a higher rate than they can be replaced, which leaves few experienced staff available to train new recruits in the contracting field, and even fewer staff with the expertise and training needed to make increasingly complex technology purchases.

I was pleased to work with Ranking Member Portman on bipartisan legislation to create a training program to help federal employees responsible for purchasing and managing artificial intelligence technologies better understand their capabilities and their potential risks.

But it's clear there is more we must do to ensure that government is at the cutting-edge of new developments and that taxpayers are getting the most out of their hard-earned tax dollars.

Frequently, agencies are challenged to work at the “speed of relevance” of the technology they buy, and procurements that take years to complete cannot keep pace with the speed of technological developments. This leaves agencies with technology that is new to them but may already be obsolete for the job at hand.

The pool of federal contractors is also shrinking, particularly with regard to new and small companies.

A recent GAO study of DoD contracting found that, while DoD contracts with small businesses increased by 15%, the *number* of small businesses awarded DoD contracts decreased by almost half.

A July 2021 Bipartisan Policy Center report noted similar concerns, along with unique barriers that small businesses in particular face when trying to enter the federal contracting process.

New, small firms are a critical component of our industrial base, pioneering new innovations, strengthening the resiliency of our domestic supply chains, and creating good-paying jobs in communities across the country.

I was proud to advance bipartisan legislation through this committee that was signed into law earlier this year, called the PRICE Act, which ensures small and disadvantaged business owners are given a fair opportunity to compete for federal contracts and continue to grow their companies.

Today, I am pleased to welcome a group of experts who can help us identify more effective solutions to address these ongoing challenges, and ensure our federal government is able to better serve the American people.

OPENING STATEMENT
RANKING MEMBER ROB PORTMAN
PATHWAYS TO PROCUREMENT INNOVATION
MAY 12, 2022

Mr. Chairman, thank you for holding this important hearing regarding federal procurement improvements. Thank you as well to our witnesses here today, including Ms. Soraya Correa for her many years of service at the Department of Homeland Security. She served the Department from the inception of the agency and I congratulate her on her recent retirement.

The United States government spends a tremendous amount of taxpayer money each year on contracts for goods and services. We know in 2020, the U.S. government obligated \$665 billion dollars, a 50 percent increase from 2015. Some of this increase was due to the coronavirus pandemic, but not all of it. And we must wait and see what the contracting outcomes will be for this year as federal agencies, like all Americans, contend with skyrocketing inflation. Procurement officials also face other major challenges in the areas of cybersecurity and workforce training.

We must also do what we can to protect and maximize American jobs, and that starts by ensuring that our tax dollars spent on government procurement goods and services aren't used to create jobs overseas. I'm grateful that one area that remains bipartisan is the policy that when the government contracts for manufactured goods, those goods should be made in America. Buy American has been the law for nearly a century. Federal agencies, however, have recently granted too many waivers to Buy American. Under current law, federal agencies may use domestic content waivers to Buy American laws to purchase goods or services from foreign companies only in certain circumstances. For example, when an American-made good is unavailable or will significantly increase the cost of a product. Federal agencies, however, overuse this waiver authority and until recently, there was not an easily accessible, government-wide system tracking the use and abuse of these waivers.

I was pleased to see my bipartisan BuyAmerican.gov Act become law in the *Infrastructure Investment and Jobs Act* and that the administration has issued an executive order creating the public website MadeinAmerica.gov to better identify contracting opportunities for American manufacturers. It mandates that any federal agency requesting a waiver to Made in America requirements to publicly submit it for everyone to see. There may be American manufacturers unknown to the government that can meet these needs. That transparency will help protect American workers and American jobs.

I also was pleased to work with Chairman Peters on the “Build America, Buy America” title of the recently passed Infrastructure Investment and Jobs Act. That title updated Buy America requirements to ensure all the money spent on infrastructure goes to American manufacturing and workers. We also included the Make PPE in America Act that requires personal protective equipment critical to respond to a public health crisis to be produced here at home. When I talked to PPE manufacturers about re-shoring this production to America, the number one thing I heard about was the need for stability through long-term contracts. The multi-year contracts as required in this legislation will give producers the certainty to know that their investment in the United States will be worth it because the government will be there to buy the personal protective equipment they produce.

Having passed all these laws, we might just say 2021 was the Year of Buy America. This committee should be proud of the work it’s done to strengthen these programs.

Again, I thank the witnesses for being here and I look forward to hearing from the witnesses today on their ideas for improving federal procurement and making the government a smarter buyer on behalf of the American people.

TESTIMONY OF

Soraya Correa
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BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

Pathways to Procurement Innovation

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Introduction

Good morning, Chairman Peters, Ranking Member Portman, and other distinguished Members of the Committee. I appreciate the opportunity to appear before you today to discuss procurement innovation.

After over 40 years of dedicated federal service in the acquisition profession, I retired in July 2021 as the Chief Procurement Officer and Senior Procurement Executive of the Department of Homeland Security (DHS). My career spanned several federal agencies and positions as both a procurement and program official. Today, I operate a small business supporting the acquisition process through advice and consultation to professional associations, industry, and academia. My commitment to the profession and the improvement of the procurement process is demonstrated through the programs and initiatives I implemented at DHS.

Acquisition Workforce: Recruitment and Retention

Speak to any acquisition leader and they will highlight the challenge of recruiting, hiring, and retaining a well trained and experienced workforce. To address the challenge, the federal government needs to *invest* in the growth and development of the acquisition workforce. By that I mean, create programs and initiatives to promote the profession, deliver the right training at the right time, and ensure career paths are clear.

One area where we can improve is in creating consistency across the profession when it comes to certification standards and promoting the use of a common language for the profession. By doing so, we can make acquisition careers more transferable between government and industry, and as a result grow the profession. I believe that the use of a common language will also make it easier for academic institutions to offer degree programs and for individuals to understand and appreciate the profession.

However, certification and training is not enough, we need to train and develop the soft skills and provide “on the job” learning opportunities. While this is nothing new, I believe that today’s acquisition professional needs to know how to communicate, collaborate, and cooperate with others, and they need to be inquisitive, risk-tolerant, and decisive. The best way to gain these skills is through on the job training where they can learn by doing.

The establishment of intern programs is one of the many ways in which agencies can develop and grow their workforce, while simultaneously providing technical, interpersonal, and leadership training. At DHS we established the Acquisitions Professional Career Program (APCP) to attract, train and hire acquisition professionals. We also created a voluntary mentoring program that included self-assessments, speakers, and other learning exercises for procurement personnel. Finally, we encouraged rotational job assignments and participation in specialized training and certification programs such as the Digital Information Technology Acquisition Professionals (DITAP) program.

Such initiatives create an environment where individuals feel appreciated and valued by their leaders.

Improving the Process – the DHS Procurement Innovation Lab (PIL)

I established the DHS Procurement Innovation Lab (PIL) to inspire and motivate the DHS acquisition workforce to put forth ideas on how we could simplify the procurement process, enhance acquisition outcomes, and ensure a more effective and efficient experience for industry and government. My goal was not to seek changes to statute or regulation, but to identify and use all the flexibilities available in the Federal Acquisition Regulation, or the FAR. Our process was designed to test the innovation or idea and share what we learned across the federal acquisition community. Since then, several agencies have created procurement innovation hubs or organizations.

Many of the innovative business practices and techniques developed by the PIL and other agencies are found on the Periodic Table of Acquisition Innovations (PTAI) which is hosted on the Federal Acquisition Institute (FAI) website: [Periodic Table of Acquisition Innovations | FAI.GOV](#). Encouraging organizations to promote procurement innovation and sharing what they learn is essential to improving the federal acquisition process.

Several agencies are also using artificial intelligence, robotic process automation, and other technologies to promote efficiency in procurement business processes and enhance the customer experience. Such efforts need to be encouraged and shared across federal agencies.

Working with Industry

While at DHS I implemented discussion forums for traditional and non-traditional contractors to learn about DHS and share with us technologies, approaches, and innovations. Two of the most popular were the Strategic Industry Conversation and the Reverse Industry Day.

At the Strategic Industry Conversation DHS officials shared with industry the challenges and opportunities that lay ahead through a series of keynote speeches and discussion panels. The Reverse Industry Day was a unique forum for industry to educate us on their business practices. Topics included what goes into preparing a proposal, why do companies protest, and how to buy certain technologies. These events provide information and generate ideas for improving business processes and removing barriers to competition. I recommend we encourage agencies to create or participate in such events as appropriate.

Procurement and Contracting Improvements

In addition to exploring the flexibilities in the FAR, at DHS we had success in using special procurement authorities including Other Transaction Authority (OTA) and the Commercial Solutions Opening Pilot (CSOP) program, to acquire innovative technologies and solutions.

These authorities provide greater flexibility in the drafting of the contractual agreement since they are not subject to the FAR and enable organizations to acquire products and services from new or non-traditional contractors with specialized knowledge or expertise. I ask that you consider making such authorities permanent and expand these authorities for use by the CFO Act agencies.

Conclusion

Thank you again for the opportunity to appear before you today. I remain committed to the success of our federal government and the acquisition profession. I take this opportunity to express appreciation for my colleagues in government, industry, and academia and a special thank you to this Committee for seeking solutions and providing the support this profession deserves.

I look forward to your questions.

Written Statement of
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United States Senate
Committee on
Homeland Security and Governmental Affairs and Reform
May 12, 2022

Chairman Peters, Ranking Member Portman, members of the Committee, and your staff, thank you for the privilege to appear before you today.

I have spent my entire 30-year career focused on our nation's security. This includes over 20 years at the Defense Intelligence Agency, 7 of which I served as the Chief Information Officer. I then spent 6 years at the Executive Office of the President involved with all aspects of federal and critical infrastructure cybersecurity. I served as a Senior Director for Cybersecurity Policy on the National Security Council staff and most recently as the Federal Chief Information Security Officer working with agencies to secure federal systems. For the past 20 months I have been a Senior Director of Cybersecurity Services at the law firm Venable where I help our clients, both large and small companies from across all sectors, enhance their cybersecurity programs through the development and implementation of risk management strategies as well as assisting with the preparation, response and recovery from various cyber incidents including ransomware attacks. I have also helped many clients who are working to navigate acquisition and compliance regimes necessary to do business with the federal government.

I want to thank the Committee for taking up the very important issues related to the timely acquisition of goods and services by the government.

My first exposure to federal procurement was in the mid-90s when I was assigned as the DIA representative to work on a global IT support contract for the defense intelligence community. I was a GS 8 or 9 and met a would-be colleague and mentor, the Airforce representative for the project. One day I made a comment about the leverage the contract gave us over the contractor and what a good deal it was going to be for the government. The Airforce representative turned to me and said, "Look son, the point of the contract is to create a relationship that allows the government and industry to work together to deliver mission outcomes."

It's not there for us to beat each other over the head with." That forever changed the way I looked out the defense industrial base and acquisition. I experienced the mission success possible from a partnership between the contracting officer, the technologists, and the vendor. Unfortunately, most people I met throughout my career viewed contracts as an adversarial tool rather than a collaborative opportunity.

Federal agencies, like nearly all organizations today, are dependent on technology to develop and deliver critical services in support of our nation. This includes everything from developing advanced military capabilities, to processing student loans, to making Social Security payments. As we have seen during the pandemic, services that were routinely done in person are being moved on-line. These digital enhancements increase productivity, increase convenience, and increase access to services. At the same time malicious cyber actors have increased their capabilities and demonstrated a willingness to exploit any system to achieve their objectives, whether they be monetary gain, espionage, or some form of activism. This evolution to a more digital experience means federal information technology investments are more critical than ever before.

And the federal government invests a lot in information technology, more than \$90 billion per year. Most of that money is spent on goods and services provided by industry partners and acquired through federal procurement processes.

For the government to be innovative in its delivery of capabilities, it must be able to harness the innovative tools, technologies, and services available across the private sector. Federal agencies need agility within the procurement system to leverage these capabilities in a timely manner. Here are five actions government can take to enhance procurement innovation:

1. Provide greater flexibilities for contracting officers to prioritize the mission interests of the government during procurements. This includes recognizing that time to market, for both the procurement

process and the vendor's delivery, is a key metric for every technology acquisition. Contracting professionals should be incentivized to consider the various mission interests when considering the risks associated with the acquisition approach and selection criteria. Senior leadership should drive their organizations to focus on mission delivery rather than the liabilities associated with compliance activities and fear of protests.

2. Establish strong partnerships between technology and acquisition professionals. Each of these groups work in specialized areas with a high level of compliance and associated oversight activity. To acquire innovative solutions, the two teams must understand and appreciate the complexities of each other's environments. I recommend creating joint teams of acquisition and technology professionals who can focus on mission delivery to address agencies most pressing technology procurement needs.
3. Develop procurement vehicles that allow for technical refresh throughout their life cycle so new technologies can be made available to agencies without necessitating a new procurement process. The government cannot afford taking years to acquire "new" technologies.
4. Consider the supply chain risks associated with goods and services in technology acquisitions. This includes the quality and provenance of the items being procured, the trustworthiness of the provider and any legal influence a hostile entity could exert on the provider. Additionally, the government should take steps to help ensure there is a trusted international marketplace available for public and private sector acquisitions.
5. Drive consistent compliance and security requirements across the Department of Defense (DoD) and federal civilian acquisitions. DoD and civilian agencies are seeking many of the same innovative commodity technologies available in the private sector, however increasing divergence in compliance requirements

increases the cost to the private sector to develop and provide solutions to both communities.

When you acquire a product, you also inherit any risks associated with its supply chain. Expanding on item four above, organizations must take steps during the acquisition process to ensure the security of their environments, including the application of supply chain risk management principles for technology acquisitions. These could include:

- 1) Trusted Market Place: In supply chain, there is often a lot of discussion around what not to do with respect to technology purchases. Do not purchase equipment from a particular provider or country of origin. This may be appropriate in some instances; however, we must also focus on the creation of a trusted international marketplace from which public and private sector organizations can make purchases.
- 2) Trusted Products in Critical Markets: Not all organizations, inside or outside of government, have the same risk profile. We need a flexible marketplace that can meet the various risk profiles at acceptable price points.
- 3) Trusted Suppliers: Trusted suppliers should be able to operate between and among industry verticals. There are security and economic benefits of encouraging trusted suppliers to support multiple industry sectors such as Information Technology, Operational Technology, Energy, Transportation, Retail, and Biopharmaceuticals.
- 4) Manufacturing process and Manufacturer intentions (“Trustworthiness”): Government and industry purchasers need to evaluate the goods and services they bring into their environments from both a quality and trustworthiness perspective. This includes understanding any legal influence an entity could exert on the provider.

- 5) Standard Supply Chain Assessments: There is significant value in standardizing or normalizing supply chain assessments, particularly when they are done by various entities within the government.
- 6) Information Sharing: Sharing with government and between/among public sector entities should be encouraged and include liability protections.

Thank you again for the opportunity to speak with you today and I look forward to your questions.



Testimony of
Elizabeth Sullivan

President
Madison Services Group, Inc.

Senate Committee on Homeland Security
& Governmental Affairs

“Pathways to Procurement Innovation”

May 12, 2022

Chair Peters, Ranking Member Portman, and Members of the Committee, thank you for the opportunity to testify before you today. My name is Elizabeth Sullivan, and I am the President of Madison Services Group, Inc. (MSGI). MSGI advocates on behalf of many segments of the small and midsize federal contracting community. I lead the policy teams for the organizations GovEvolve, HUBZone Contractors National Council, Montgomery County Chamber of Commerce (MCCC), Women's Procurement Circle (WPC), Women Veterans Business Coalition (WVBC), CAMEO and the Secure Supply Chain Consortium. I also hold a M.S.L. in Government Procurement and Cybersecurity Law from The George Washington University School of Law.

Our advocacy focuses on enabling small businesses to compete for work, but in many ways, the acquisition policies are stacked against these businesses. In the current federal procurement system, there are two prevalent truths. First, with the implementation of governmentwide category management and associated goals, the utilization of large vehicles has increased, while the number of direct contracts – often to small businesses – has decreased. While this shift is not inherently bad, the change in buying results in more dollars for fewer businesses. Therefore, if a small business does not get a slot on a contract, potential opportunities shrink significantly. Second, the average award amount has increased, while the number of small businesses participating in the industrial base has decreased. This decrease creates a less resilient industrial base.

Data on government spend illustrates this issue. Despite a rise in contract dollars to small business, their share of market remains the same. These statistics bring attention to the need to adapt to this way of buying, which requires new strategies for small businesses and changes to Small Business Administration (SBA) contracting programs to increase small business participation. Despite \$144 billion in awards to small businesses in FY2020, the government hovered around 21% of all dollars awarded to small firms.¹ Despite an increase in dollars awarded, the small business share remains relatively the same.

There are numerous issues contributing to this decline. First, there is inconsistent usage of small business programs across the Federal Government. While some agencies are more innovative in their procurement methods, others are unwilling to use small businesses – often citing risk. The governmentwide practice of category management is also one of the top contributors to the shrinking number of small businesses in the federal market. This practice directs federal agencies to consolidate contracts, leaving many small companies unable to compete for procurements with such broad scopes. According to The Pulse of GovCon, on average, the small business federal contracting market loses 5% of entrants every fiscal year (FY). The industrial base has decreased dramatically – a concern for this Committee. This decline is also impacting midsize companies – according to Bloomberg Government, the count of active federal prime contractors fell 17.5% from 123,790 in FY2016 to 102,047 in FY2020.

Ensuring success as a small business in federal contracting involves not only good business practices as required in the commercial sector, but an additional layer of navigating federal regulations—a daunting task requiring added resources. The call for equity in federal contracting by the Biden Administration rightfully focuses on ensuring small businesses can enter this market and achieve success.² Other barriers, however, require Congressional action to ensure that the

¹ Bloomberg Government data

² OMB memo M-22-03

government has access to the supplies, services and technologies provided by innovative, non-traditional firms.

I. Strengthen agency focus on small business programs

I would like to thank this Committee for spearheading the Promoting Rigorous and Innovative Cost Efficiencies for Federal Procurement and Acquisitions (PRICE) Act, which was recently signed into law. The PRICE Act addresses the need for modernizing the federal acquisition system and will be transformative for small business contractors around the country. It tackles one of the barriers to procurement innovation – effective utilization of small businesses. The newly formed governmentwide council of procurement officials will help chip away at agency hesitation to use small contractors.

While the PRICE Act addresses an important component of the acquisition system, it is also important to strengthen agency focus on utilizing women-owned companies. The goal for contract awards to women-owned small businesses has only been met twice by the Federal Government. Despite a decade in existence, the women-owned small business (WOSB) program at the SBA is woefully underperforming. More than 36% of American businesses are women-owned, a segment growing at 4 times the rate of men-owned businesses. Government support through various procurement, lending and business assistance programs play a key role in the success of women-owned businesses. A continued focus on promoting women in business throughout the Federal Government will maximize and grow their already sizable impact on our economy.

For example, the Interagency Committee on Women's Business Enterprise played a vital role in monitoring, coordinating, and promoting programs within federal agencies that support and strengthen women's business ownership. Reauthorizing this Committee is a much needed step in strengthening agency focus on awarding more contracts to WOSBs. Revitalizing the Committee would further provide a focus on agency actions that could help WOSBs access to technical assistance, government contracts and financial support.

Due to recent SBA action, 85% of all NAICS codes are now eligible for the WOSB program.³ The new SBA certification, although certainly not trouble free, does away with cumbersome requirements on contracting officers who want to make an award through the program. Yet, members of the Women's Procurement Circle tell us women-owned companies continue to fight an uphill battle to win awards through this important set-aside program. Time and time again, women-owned businesses find 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 it.

Additionally, women veterans are an important part of the contracting ecosystem. Currently 2 million women veterans live in the U.S. and comprise nearly 20% of serving military personnel and 10% of the veteran population. By 2040, the women veteran population is projected to grow to 18%. As the number of women serving in the military have increased, so have the number of women veterans who start businesses. As of 2012, 400,000 women veteran owned businesses

³ <https://www.federalregister.gov/documents/2022/03/18/2022-05788/women-owned-small-business-federal-contracting-program-identification-of-eligible-industries>

accounted for 3.9% of all women-owned firms in the U.S. They contribute greatly to the economy, bringing in \$17.9 billion in receipts. The Federal Government has a goal of awarding 3% of all contract dollars to service-disabled veteran-owned small businesses (SDVOSBs). Year over year, the government has exceeded that goal – in FY2020, 4.28% (\$23.9B) went to SDVOSBs.⁴ However, women veteran businesses are not receiving contract awards at the same level as their male counterparts. Additional incentives by all federal agencies need to be created to make this happen, not just the Department of Veterans Affairs (VA).

Strengthening this focus also requires emphasis on the implementation of the Administration's goal to expand small business contracting opportunities when category management initiatives are carried out by procuring agencies. Since the government's efforts to streamline procurements through category management and "Best in Class" (BIC) procurements has led to fewer small businesses in the government contracting arena, the importance of meeting small business goals should be elevated. Fewer small businesses competing for work results in less competition, often cutting out awards to smaller companies.

Adding to the challenge of awarding contracts to small businesses is an understaffed contracting workforce. In FY2020, civilian agency employment was up 6.1% overall, but down 1% in cabinet-level agencies. Despite this increase, contract spending at the Chief Financial Officer Act agencies grew 43% from FY2016 to FY2020. The agencies, which account for more than 99% of overall contract spending, spent \$680 billion in FY2020. The average contract administrator in FY2020 managed a portfolio of 13 contracts, obligating \$12 million – a 21% jump compared to FY2016. Those obligations also went out the door on fewer contracts: the number of unclassified prime contracts fell 14.7% governmentwide, dropping to 904,000. In fact, the value of an average prime contract reached \$753,000 in FY2020, a 68% increase over 5 years.⁵ This points to an overworked, under resourced workforce that has increasingly less time to focus on each procurement. The Committee should explore ways to strengthen this vital workforce.

II. Harmonize small business programs

Many acquisition policies for small businesses suffer from the lack of parity in the socio-economic small business programs. Changes to the law occur over many years and these programs vary due to Congressional or agency action. The small business programs have many different rules and requirements for the acquisition workforce, often leaving small businesses to try and explain them to the contracting officer. For example, the 8(a) program has different criteria for individually-owned versus group-owned entities. The Historically Underutilized Business Zones (HUBZone), SDVOSB, and WOSB programs also have different sole source thresholds and requirements than the 8(a) program. These differences explain why government awards are not equally distributed among these socio-economic groups. This is illustrated by the fact that the Federal Government has never met its HUBZone goal of 3%. These differences result in unnecessary complexity and the Congress would do well to fix it.

Broad bipartisan support for increasing small business participation in the federal marketplace dictates changes are needed to bolster awards to these businesses. One mechanism to increase

⁴ <https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf>

⁵ <https://about.bgov.com/news/staffing-spending-trends-feed-appetite-for-high-value-contracts/>

awards to businesses in the socioeconomic categories of individually-owned 8(a), WOSB, SDVOSB and HUBZone certified businesses is to increase the sole source thresholds currently in place. Increasing these thresholds are a necessary change to acquisition policy, especially given the growing average size of contracts. We have been working for many years to raise the dollar amount allowed for sole source contracts to businesses within these groups. However, despite many Congressional testimonies and hundreds of companies asking Congress to raise these limits, the change has not been able to get over the finish line. The result is that contracting officers just don't use this authority – both the dollar limits and the justifications required by all but the 8(a) program are too cumbersome. As government buying continues to trend through large vehicles and move away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. Therefore, the current caps are insufficient with acquisition practices today. Small businesses and the Federal Government will both benefit from this change.

Another discrepancy that could harmonize small business rules is specifically for the HUBZone program. The price evaluation preference helps level the playing field for HUBZone firms in full-and-open competition, as well as affords federal agencies greater opportunity to devote federal spending to HUBZone firms. Regrettably, federal agencies have interpreted FAR 19.1304 as prohibiting the price evaluation preference to task orders when, in fact, it only prohibits commodities.⁶ Congress should direct federal agencies to amend their interpretation to follow the law as Congress intended. As the government increasingly drives its spending through indefinite delivery, indefinite quantity (IDIQ) contracts – especially those designated as BICs – a significant opportunity for HUBZone spending is being lost since the price evaluation is not being applied in the award of task orders. Applying the price preference would significantly benefit the SBA, federal agencies, HUBZone firms and the communities they serve.

III. Eliminate rulemaking discrepancies

Pervading inconsistencies exist in government contracting due to discrepancies between final rules issued by the SBA and the Federal Acquisition Regulatory (FAR) Council. This causes confusion for both companies and federal agencies on which guidance they should ultimately follow. Many in the acquisition workforce do not follow changes in small business rules unless it is in the FAR, even though final rulemaking by the SBA is sufficient. In addition, the time lapse between FAR Council action and final rules promulgated by the SBA can span many years.

For example, the FAR Council published a final rule in February 2020 to implement regulatory changes made by the SBA in 2013 around small business representation in Multiple Award Contracts (MACs).⁷ Although the rules had been reflected in SBA regulations for quite some time, procurement officials often do not follow SBA's rules if they are not incorporated in the FAR. In turn, they are not incorporated into contracts. This 7 year delay in rulemaking cost federal contractors countless hours and compliance headaches, as well as wasted time for the acquisition workforce. To remedy this problem, we recommend that the FAR Council should be required to issue its rulemaking simultaneously with the SBA.

⁶ Jon Williams and Tim Valley, EXISTING STATUTORY AND REGULATORY PROVISIONS SUPPORT APPLICATION OF THE HUBZONE PRICE EVALUATION PREFERENCE TO TASK ORDERS, PilieroMazza PLLC (MARCH 5, 2021)

⁷ <https://www.govinfo.gov/content/pkg/FR-2020-02-27/pdf/2020-02028.pdf>

IV. Shift the buying environment to counteract category management

While the Biden Administration did not entirely reverse this initiative, instructing the Office of Management and Budget (OMB) to hit the pause and reassess how category management should be used is a step in the right direction.⁸ Indefinite Delivery Vehicles (IDV) represent many of the largest contracts across government. IDV spending increased 41% from FY2016 to FY2020 and accounts for nearly half of all obligated spending.⁹ Category management has accelerated the decline in diversity of vendors, with large dollar amounts held by only a few companies. Nearly 1 of every 4 federal contract dollars is spent through a MAC, with spending on these vehicles growing 42% over 5 years. The U.S. Government Accountability Office (GAO) found that the number of small business vendors providing common products and services decreased each year, continuing a decade-long trend affecting both small and larger businesses.¹⁰ Further, as the government moves away from direct contracts with businesses (Tier 0), opportunities decrease for smaller businesses. The vehicles (agency-wide, government-wide or BICs) used in category management require substantial resources to bid and win task orders. This need for resources creates a barrier to entry for many innovative small businesses to enter or remain competitive in the federal marketplace, especially as BIC spending totaled a record \$51 billion in FY2020, up 74% since FY2016.¹¹

Amid a decline in awarding direct contracts and contract consolidation, it only makes sense that subcontracting is one of the best opportunity for small businesses to enter and grow in the federal market. Yet, this strategy comes with its own set of challenges. We have spent nearly 4 years working on solutions with the Montgomery County Chamber of Commerce's GovConNet Council to streamline this process. Undoubtedly, you have heard from constituents that even though they worked with a prime contractor to win a proposal, they never got any work and have no recourse. Since the government does not have a relationship with subcontractors, small businesses have very little leverage to remedy this problem. In our view, Congress should adopt changes to the subcontracting ecosystem in the House bill, *Strengthening Subcontracting for Small Businesses Act of 2022*, as well as any additional adaptations made in future legislation.

Small business offices are also incredible resources within federal 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. This includes increasing the number Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) that work with federal agencies to increase federal contracts awarded to small businesses. PCRs increase the small business share of federal procurement awards by initiating small business set-asides, reserving procurements for competition among small business firms, and providing small business sources to federal buying activities. In addition, PCRs advocate for the breakout of items for small businesses in full and open competition to create savings for the Federal Government. There are a significant portion of small business eligible contract dollars that are not tapped for small businesses due to the PCR/CMR lack of coverage, as

⁸ <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf>

⁹ <https://about.bgov.com/news/staffing-spending-trends-feed-appetite-for-high-value-contracts/>

¹⁰ <https://www.gao.gov/assets/gao-21-40-highlights.pdf>

¹¹ <https://about.bgov.com/news/staffing-spending-trends-feed-appetite-for-high-value-contracts/>

well as significant eligible small business spend and buying activities with limited or no PCR/CMR coverage. Congress should increase funding to expand the number of these vital positions.

Small businesses in the information technology (IT) industry face particular challenges with respect to the current buying environment. As the focus of government spending shifts more and more towards innovation and meeting agencies' burgeoning technology needs, small businesses are providing the government with IT, including hardware, software, and cloud computing more than ever before. For example, small business IT value-added resellers (ITVARs) are an important part to this ecosystem. ITVARs provide beneficial value-added services, help the government meet its small business goals, and create more competition in the market. The contracting ecosystem depends on small businesses to round out its supply chain and facilitate achievement of important procurement goals, and small business IT resellers are a critically important component. However, issues and restrictions surrounding small business procurements have led to frequent misclassification of IT procurements and potential liability for contractors. The current regulatory landscape includes a patchwork of rules and regulations for small businesses, including recent rules specific to the IT industry, that are unworkable in many cases. This, coupled with contractor misunderstanding of the rules and unwillingness by agencies to grant necessary waivers, has made it challenging – and in many cases impossible – for small business IT resellers to participate in federal procurements without potentially violating the law. In many instances, small business IT resellers are forced to choose between missing out on federal business opportunities and potentially opening themselves to considerable liability. As IT evolves, so should the rules applicable to IT procurements, particularly where this will allow more opportunity for small businesses to compete.

One of the biggest hurdles for ITVARs is with respect to the North American Industry Classification System (NAICS) code assigned to these procurements. Although the NAICS codes in many cases do not entirely mirror their specific requirements, these codes have a substantial impact on federal procurements. Often, a contract for IT-related acquisitions may be mixed, involving both products and services. For these mixed procurements, however, the contracting officer still must assign a single NAICS code according to the “component that accounts for the greatest percentage of contract value.”¹² This causes problems for ITVARs because in many cases these entities provide a combination of products and services not contemplated by traditional NAICS codes. The ITVAR exception under NAICS code 541519 is also unfortunately insufficient to categorize the products and services required in recent complex agency IT procurements.

The government regularly issues solicitations under inappropriate NAICS codes. Due to minimal compliance oversight, the onus has shifted to small businesses to use already scarce time and resources to hold government agencies accountable on proper NAICS utilization via protests. Relying on protests to check this frequent misuse is unrealistic, costly, and unfair for small businesses. The OMB Economic Classification Policy Committee (ECPC) should create a new, stand-alone NAICS code for IT value-added resellers to remedy this problem. Additionally, SBA should institute an appropriate employee-based size standard of 300 employees for this new NAICS. Recognizing that IT resellers typically operate on low margins even though their annual receipts may be high, the size standard should be based on employee count rather than annual revenue.

¹² 13 C.F.R. § 121.402(b)(2).

Another challenge for growing small businesses is exceeding the SBA's size standard too quickly. As government contracts become larger, a small business must 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. Essentially, small businesses are being penalized for their success. This is especially true for the 8(a) program, where businesses that have been successful over the 9 years struggle to succeed after graduation if they are no longer eligible for small business set-asides. Government contractors experience a unique pattern in their growth because it can be unpredictable, sometimes hovering in the single digits and then experiencing extreme growth over 2 or 3 years. This pattern of sudden growth is increasingly common due to the increased use of large contract vehicles, under which contractors can be awarded substantial task orders. Competitiveness takes time to build. 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. Congress should explore options to support small businesses continued success after they size out of SBA's small business programs.

V. Balance past performance requirements

Many of the current past performance requirements continue to plague the small business community. The government relies on strong past performance when considering awarding a contract. However, many times these requirements result in a "chicken and egg" situation – the company can only get past performance by performing on a contract, but cannot be awarded a contract unless they have past performance. A recent attempt at solving this issue was proposed on the new General Services Administration (GSA) Polaris procurement, but withdrawn due to a pre-award challenge. The solicitation planned to allow small companies in a mentor-protégé joint venture arrangement to rely solely on the past performance of the large company in their team. While this proposal solved the problem for some newer small businesses, allowing this use of past performance could also hurt more mature small businesses that have spent significant time and resources gaining adequate past performance over many years. As a key governmentwide acquisition vehicle for small federal IT contractors, the resolution needs to take a number of these factors into consideration to ensure that all sizes of small businesses can compete.

Additionally, the SBA also issued a proposed rule in the Federal Register that, when finalized, would allow contractors without direct experience in government contracting to count experience gained through participating as a joint venture member or first-tier subcontractor. While this is a way to assist in getting more companies into the federal marketplace, it needs to take into consideration small companies who have past performance on their own and do not need a joint venture agreement to perform the work, making sure they are not put at a disadvantage.

VI. Clarify conflicting cybersecurity requirements

I would be remiss if I didn't point out the uncertainty over cyber security requirements that loom over small businesses. With the constantly evolving cybersecurity standards for government contractors, it can be challenging for small businesses to remain compliant. To tackle part of this problem, the Department of Defense (DoD) created and started implementing the Cybersecurity Maturity Model Certification (CMMC), now CMMC 2.0. A comprehensive, streamlined, and clear

process is necessary in the rollout of this new certification to maintain a strong industrial base. Although this new certification is not specifically in the jurisdiction of this Committee, contractors in the civilian acquisition environment also need adequate cybersecurity. Concerns remain around undecided components of the new certification, including potential assessments at workers personal residences.¹³ I would encourage this Committee to evaluate how civilian agencies can coordinate with DoD on making sure new cybersecurity requirements translate to their agencies in a clear, consistent way, and do not shut out small businesses by requiring excessive costs to comply.

Further, some current solicitations put contractors attempting to comply with requirements around security for all of their federal customers at odds. For example, a recent VA IT acquisition RFP interprets that the procurement does not have to comply with the Trade Agreements Act (TAA) because it is an SDVOSB set-aside.¹⁴ However, there has been a significant focus from the current Administration on supply chain security requirements, and non-compliance with TAA could open the government up to purchasing from countries that don't have the same security protections the U.S. expects. These inconsistencies create confusion for small businesses who are seeking compliance with all government security requirements.

Conclusion

If the Federal Government wants to purchase goods and services from small businesses, there are certainly acquisition rules that encourage these awards. If, however, a more equitable, resilient, and innovative procurement landscape is one of the goals of the system, U.S. acquisition policies need to be in line with business profitability and sustainability, as well as the current buying landscape. Changes, such as the ones proposed in my testimony today, would be workable if the government is committed to buying from small businesses, while at the same time meeting other objectives the government has for its supply chain. Adopting the outlined recommendations will also reap benefits for multiple stakeholders. Increased tools to empower the contracting workforce to award to small businesses, greater opportunities for utilization of SBA programs and a more efficient procurement system all build resiliency of the industrial base. While these proposals only tackle certain components of our procurement system, increased resiliency of innovative small contractors benefits both taxpayers and the Federal Government, as well as the small businesses that are job creators and critical employers across our country.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

¹³ <https://cmmcab.org/videos/cmmc-town-hall-march-2021/>

¹⁴ FAR 25.4