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LEVELING THE PLAYING FIELD: CHALLENGES FACING SMALL BUSINESS CONTRACTING

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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THURSDAY, FEBRUARY 15, 2024

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

The Subcommittee met, pursuant to call, at 10:03 [a.m.], in Room 2360, Rayburn House Office Building, Hon. Nicholas LaLota [chairman of the Subcommittee] presiding.

Present: Representatives LaLota, Ellzey, Molinaro, Bean, Maloy, Scholten, McGarvey, and Thanedar.

Chairman LALOTA. Good morning. Before we get started, I would call on Ranking Member Scholten to lead us in the Pledge of Allegiance.

Ms. SCHOLTEN. Would you please stand with me.

All. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Chairman LALOTA. Good morning. And welcome to today's Small Business Subcommittee hearing on leveling the playing field and challenges facing the small business contracting.

First, I want to thank our witnesses for joining us today, a few of who have traveled here from the best place in the country, Long Island. Your time is very much appreciated, and I look forward to your testimonies, all three of you.

Today our Subcommittee will focus on several critical issues facing Main Street America.

First, the number of small businesses receiving federal contracts has decreased by 50 percent over the past 10 years. Further, nearly 60 percent fewer small businesses are entering the federal contracting system. Second, the regulatory burden placed on small businesses that seek to enter federal contracting is too high. And, finally, third, we intend to address the systemic failures in the federal acquisition process which undermines small business participation in contracting.

But it is not enough that we point out those problems. The focus here should be on how we solve these three and other issues, knowing the crucial role that Main Street America and small businesses play. We want to help increase competition, innovation, and stimulating our economy through our small businesses.

It is embarrassing and even shameful that our small businesses have been systematically squeezed out of federal contracting for

decades, and this decline comes as no surprise as the administration actively steers our economy and national security in the wrong direction.

At a time when the country needs a robust defense industrial base, small businesses are getting pushed out of government contracts in this very space. Specifically, in my district, we are the nation's second largest industrial park after Silicon Valley, in Hauppauge, and, more broadly, Long Island is home to over 167 defense and aerospace companies comprising over 3 million square feet of industrial and commercial space, with 10,000 full-time employees and $3 billion of economic activity.

And with the decline of domestic industrial small- and medium-size defense contractors, it is vitally important that we recognize and promote the vital work of our existing industry, like Long Island's industrial defense industry, whose contributions keep our military prepared at a moment's notice.

As we look at contracting the Department of Defense, we must not only consider the primes but also the tiers of suppliers providing parts for ships, submarines, and planes, or businesses providing vital services.

The bureaucratic red tape small businesses are forced to navigate is also extremely harmful and burdensome. Needless to say, the complexity of these barriers makes it even harder for small businesses to enter the federal marketplace. For example, involvement in federal contracting requires a sufficient understanding of the long and cumbersome regulations related to federal acquisition, defense federal acquisition, and within the federal register. Together, these burdensome and bureaucratic documents are over 94,000 pages long and require thousands of man hours to read. I am sure that we can all agree that no small business has the manpower to accomplish this burden successfully.

Finally, we must examine the systemic failures currently in the federal acquisition process which consistently undermine main street. Practices like self-certification and joint ventures are ripe for exploitation by large companies to the detriment of small firms when large firms partner with a small business to gain access to small business contracts. Fraud is rampant in self-certification, and yet the administration seeks to expand rather than correct these actions.

I recently joined my colleague from the other side of the aisle and fellow New Yorker, Ranking Member Velázquez, in introducing a bill that would phase out self-certified women-owned small businesses from the governmentwide procurement goals and protect the integrity of that program.

Just like with any small business program across the federal government, we must ensure structure and guidance is in place to ensure firms are accurately represented. Our goal in this Committee is to create a pathway for small businesses to succeed, and we must ensure that small business is given the opportunity to thrive without drowning in bureaucratic red tape.

Thanks again for everybody joining us today. Our witnesses' real world experiences, which we will hear shortly, will help this Committee work to make meaningful improvements to ensure small businesses are fully utilized in the federal procurement market-

place. We must work together to stop the decline of small business contracting and fight to keep main street open for business.

With that, I yield to my distinguished colleague, the Ranking Member from Michigan, Ms. Scholten.

Ms. SCHOLTEN. Thank you so much, Mr. Chairman, for holding today's important hearing.

The premise is simple and straightforward: The federal government needs to contract with businesses in order to run. We believe they should be contracting with small businesses. How and the means through which that happens is what we are going to be talking about today.

The federal government is spending almost half a trillion annually on goods and services needed for its daily operation. In fiscal year 2022, 5.5 billion defense contracting dollars were spent in Michigan alone. At least 131 million of those dollars are spent in my district. This money brings well-paying jobs to west Michigan and stimulates the economy.

The U.S. Government remains a consistent and reliable client, yet the federal marketplace can be a hard space to survive, especially for small businesses. Small businesses experience challenges, including lag time between the speed of approvals and the speed of acquisitions, lack of uniform requirements across agencies, and inconsistent contract windows. These issues threaten the health of the industrial base and those businesses participating in it.

If anything, we should be able to agree that the economic security and national security of our country is dependent upon a strong industrial base fueled by secure supply chains. Small businesses play a critical role in making sure that happens.

To that end, I am glad that this Committee is examining the ways to empower our agencies to establish clear guidelines that would spare businesses the costs of associating with compliance with varying redundant and antiquated reporting requirements.

The ability of small businesses to compete in the federal marketplace has also been adversely affected by the lack of staff in critical roles. Our witnesses here today may not be surprised to learn that there are openings in the role of procurement center representatives and commercial market representatives overseeing millions of contracting actions. Those delays result in attendant delays down the chain. Small businesses cannot be adequately advocated for with such few numbers promoting their use and ensuring the agencies are following the small business contracting procedures.

Lastly, the government has taken steps, such as in the SBA taking over the certification process for Service-Disabled Veteran-Owned Small Businesses from the Department of Veterans Affairs, to streamline the certification process and eliminate unnecessary redundancies. I welcome discussions like today so we can build on success like this and identify additional factors challenging our small contractors and develop thoughtful, effective solutions.

What is important for this Committee to keep in mind is that the testimony we hear today is part of the bigger picture, which is that the federal procurement marketplace is always evolving, and it is incumbent upon our agencies to remain agile, responsive, and accountable to the partner small business community that they work with. Small firms bring new ideas to the table, which in turn gen-

erate new jobs, new solutions, and, again, secure our industrial base. We must take steps to ensure that they can thrive and navigate the federal marketplace.

I want to thank all of the witnesses for being here today, including our constituent business represented by Mr. Bob Taylor here today.

And I yield back the balance of my time.

Chairman LALOTA. Thanks so much.

One of the responsibilities of both the Chair and the Ranking Member of the Committee is to identify and invite qualified witnesses to help us identify those issues and to help to provide solutions.

And I am thrilled to introduce our first witness here today, hailing all the way from my neck of the woods on Long Island, Mr. Joe Spinosa.

Thanks for being with us today, sir.

Mr. SPINOSA. Thank you.

Chairman LALOTA. Mr. Spinosa is the Vice Chair of ADDAPT and former co-owner and vice president of business development at East/West Industries located in Ronkonkoma. Mr. Spinosa has an amazing 44-year track record of success in business development with his contributions including designing, developing, and manufacturing aircraft subsystems.

As the Cold War is ending, ADDAPT was formed in 1991 in response to reductions in defense spending by the federal government. ADDAPT's focus is on promoting the interests of New York companies adversely affected by consolidations among prime contractors and downsizing throughout the aerospace and defense industry.

Mr. Spinosa graduated from Fordham University with a bachelor of arts degrees in economics and applied psychology.

Thanks again for joining us today, Mr. Spinosa, and we look forward to the conversation ahead.

Our next witness here today is also a very qualified Long Islander too, Mr. Joel Lipsky. And Mr. Lipsky is president of Lipsky Construction located in Bayport, New York. Lipsky Construction was founded in 1955 when Herbert Lipsky founded the Levittown carpentry program, earning its reputation by transforming hundreds of Cape Cod models into expanded Colonials. Now Mr. Lipsky serves as president of his own third-generation family business. Prior to working for his family business, Mr. Lipsky worked for the Haskell Company and the Turner Construction Company.

Mr. Lipsky graduated from the University of North Florida with a bachelor's degree in construction management.

Thanks so much for joining us here today, and we look forward to the conversation ahead.

And I am going to yield to the Ranking Member for our final introduction.

Ms. SCHOLTEN. Thank you so much, Mr. Chairman.

It is truly my pleasure to introduce our final witness today, Mr. Bob Taylor. Mr. Taylor is a decorated veteran of the U.S. Air Force and is the founder, CEO, and sole owner of Alliant Healthcare Products which is based in my district, Grand Rapids, Michigan. Alliant specializes in manufacturing lifesaving and life-improving

healthcare products that help our Active Duty military and veterans every day.

Mr. Taylor earned his bachelor's of science degree from Michigan State University. Go Green.

Since founding Alliant in 2002, he has successfully grown his company, navigated an evolving federal marketplace, and established strong relationships with the Department of Defense and Department of Veterans Affairs. In 2019, the SBA's Michigan chapter recognized his efforts in naming Alliant as the Veteran-Owned Small Business of the Year.

I am thrilled to have you here, Mr. Taylor, and look forward to your testimony. Thank you for being here and thank you for your service to our country.

Chairman LALOTA. And thank you. Appreciate, Mr. Spinosa, Mr. Lipsky, Mr. Taylor, all three of you, for making the trek to Washington to help inform us on this important conversation here today.

Before I formally recognize you for your testimony, I want to remind you that your oral testimony is restricted to 5 minutes in length. If you see the red light in front of you come on, it means that your 5 minutes has concluded, and that is go time. That is time to wrap it up.

And we want to recognize first, Mr. Spinosa, for your 5-minute opening remarks, sir.

STATEMENTS OF MR. JOE SPINOSA, VICE CHAIR, ADDAPT; MR. JOEL LIPSKY, PRESIDENT, LIPSKY CONSTRUCTION; AND MR. BOB TAYLOR, OWNER AND CEO, ALLIANT HEALTHCARE

STATEMENT OF MR. JOE SPINOSA

Mr. SPINOSA. Thank you very much, Chairman and Congresswoman. Thank you for allowing ADDAPT to testify today.

I will be presenting points which have been collected from member companies of ADDAPT, over 120. They represent tiers 1, 2 and 3 of the supply chain.

In order to set a baseline, let me reference the following points that were made in a message by Secretary of Defense Austin. Small businesses account for 99 percent of all employer firms, 44 percent of our nation's economic activity. Small businesses comprise more than 70 percent of the companies that do business with DOD. They keep our military forces combat ready with critical parts, cutting edge technology, and top notch services. They fortify our defense supply chains in times of crisis. They ensure the military has the best capabilities to keep us safe.

The most innovative minds in the country come from smaller companies. Despite efforts, though, the defense industrial base has declined by over 40 percent in the past decade. If we do not work to reverse the decline of small business contracting, then the industrial base that equips our military will weaken. If we do not take action, we risk losing mission-critical domestic capabilities, stifling competition and innovation, and potentially weakening the supply chains.

From ADDAPT's perspective, in fact, small businesses that support aerospace and defense efforts are struggling to survive and

stay relevant. Small businesses are faced with many challenges. We have categorized our presentation of challenges in two basic categories: overarching or primary issues and breakdown of system or secondary issues. Today I will cover my oral only the primary issues.

Regulations are many and complicated, leading to the need to hire costly attorneys and translate regulations for small business owners. Small business owners do not employ full-time attorneys on staff. Many small businesses agree to contractual terms and conditions that are onerous or risk-intense because they have no choice.

Financial issues arising from the economic environment resulting in high interest rates and limiting access to capital.

There is a need for equitable adjustments to be available for multiyear fixed price contracts to counter the unprecedented inflation increase and drastic changes to the markets of raw material, process and finishing, and power.

Consideration should be made for interest costs to be considered as allowable costs, where progress payments have not been extended as part of the contract consideration. It is difficult for small businesses to be extended progress payments or milestone payments as part of contracts from the government or primes.

There is a need to maintain the waiver on progress payment rates and encourage prime OEMs to extend that to tier 1 suppliers. Also request the progress payment threshold to remain at 95 percent for small businesses.

Cybersecurity has added a new wrinkle to the challenges. We understand and support that this is a required effort, but it is expensive to implement for a small business. According to our Members, to accomplish and implement CMMC for a small business can run from $200,000 to $500,000. For the average small business, this is a considerable amount and is growing. This is just to be allowed entry into the system to provide a quote to the prime or the government.

Who will ultimately bear the cost for this? If it is added to the cost of items being quoted, will the small business be deemed noncompetitive? Furthermore, at the lowest levels of the supply chain, having to implement CMMC can be too expensive or beyond their capabilities, leading to a death spiral in the defense industrial base. Is there a right size solution to protect small business of the DIB while still protecting data integrity of the warfighting apparatus? Will there be sufficient numbers of assessors on hand to perform the certification to address the demand?

Workforce development is another issue. Pandemic effects have reduced the workforce. In order to recover, defense manufacturers need programs that encourage and assist those that wish to be employed in the industry. Grants for training, certification, and transportation are needed to develop that workforce.

As we have seen, there are many issues that challenge small businesses. It has become very difficult for small businesses in the aerospace and defense industry to make a good living and continue to invest in their companies to provide the kind of stabilities and capacities we need as the country moves into the future.

Once again, ADDAPT thanks you for this opportunity to testify.

Chairman LALOTA. Thank you.

And I now recognize Mr. Lipsky for his 5-minute opening statement.

STATEMENT OF MR. JOEL LIPSKY

Mr. LIPSKY. Chairman LaLota, Ranking Member Scholten, and Members of the Committee on Small Business, Subcommittee on Contracting and Infrastructure, thank you for inviting me here to testify today. It is an honor to be in your presence.

My name is Joel Lipsky, and I am president of Lipsky Construction located in Long Island, New York. Lipsky Construction is a third-generation commercial contracting company started by my grandfather in Levittown. Since my brother and business partner, Alex, and myself succeeded the company from my father and my uncle only a few short years ago, our organization has grown to over 12 construction management professionals who currently work with us today. We work in collaboration with some of the region's most respected design professionals in the New York area, and our work covers both the private and public sector.

I am testifying on behalf of the Associated General Contractors of America, otherwise known as the AGC. The AGC is the leading association in the construction industry, representing more than 27,000 firms and their employees, including some of America's leading small business construction firms. It must be noted that more than 90 percent of firms within the construction industry have 20 or fewer employees. The AGC appreciates and thanks the Subcommittee for its continued efforts to help improve our nation's infrastructure and help develop small businesses.

One of the greatest challenges contractors face with federal agencies is the disruption of cash flow on a construction project. Cash flow is critical, and without sufficient cash flow, a construction project would never start. Government projects rarely provide any deposit to initiate services and largely do not release funds for any type of early material procurement, leaving the onus on the prime contractor to manage those expenses.

Oftentimes to keep the project moving, small businesses self-finance government projects. Lipsky Construction and other small contractors like myself can only self-finance these projects for so long. Slow payments impact not only the prime contractor but all lower tier subcontractors and suppliers as well.

It must be noted, Chairman LaLota, as a prime contractor, we at times put the burden on the second- and third-tier subcontractors and suppliers to self-finance their portions of the work. And for Lipsky Construction, this includes putting that financial burden on many of the contractors who are your constituents, as a large portion of my subcontractors who I work with live within your district.

The result is a decrease in competition for federal projects and fewer opportunities for small businesses. Additionally, these barriers prevent potential construction companies from ever even wanting to enter the federal market.

Construction has been a well-regulated industry, and transparency is important to providing accountability to the American people. While there are many benefits to regulation, there is a bal-

ance between regulation and overregulation. This issue becomes particularly hard for small businesses with fewer than 15 employees.

As the owner of such business, I frequently navigate the challenges by deploying my support staff in very diverse roles. One day my office manager might be handling phone reception. The next day she might be engaged in tasks like minority- and women-owned reporting, and another day she might be doing Section 8 labor outreach, all of which are required to work on federal projects.

For the construction industry, labor shortage is still one of our biggest challenges. Despite increase in pay and benefits, the construction industry's labor shortage remains. A 2023 AGC survey found that 93 percent of construction firms have open positions that they are struggling to fulfill, not only skilled labor but also skilled construction professionals.

I want to thank you again for inviting me and the AGC to testify before the Subcommittee today. I look forward to answering any questions you may have.

Chairman LALOTA. Thank you.

I now recognize Mr. Taylor for his 5 minutes of remarks.

STATEMENT OF MR. BOB TAYLOR

Mr. TAYLOR. Good morning, Chairman LaLota, Ranking Member Scholten, and distinguished Members of this Committee. Thank you. It is my honor to provide my testimony to this Committee about the way that my small business can work with the federal government in a more effective and efficient manner.

My name is Bob Taylor, and I am testifying on behalf of the three businesses that I have in Grand Rapids, Michigan, where I employ 71 people. I am the 100 percent owner of Alliant Healthcare Products, a verified Service-Disabled Veteran-Owned Small Business, which sells healthcare products to the VA and U.S. military hospitals throughout the world, its sister company, Medisurge, a contract medical manufacturer, and Alliant Biotech, an orthopedic company focused on knee implants.

As background, I had a 17-year military career leading to the rank of major. I served my first 6 years in the Air Force on Active Duty as a B-52 navigator and radar navigator. As a first lieutenant, I flew 11 combat missions during the first Gulf war.

I wrote a book which was published earlier this year called "From Service to Success." The book reflects on my combat experience, the challenges I faced, and provides a roadmap for how veterans can overcome these challenges and not only survive but to find the greatest success of their lives.

Since starting Alliant Healthcare almost 22 years ago, we have earned a strong reputation as an exceptional federal market expert who provides value throughout the supply chain. Small businesses are vital to this space. If we have learned anything from our time with COVID it is that our supply chain is fragile, and it is imperative to our national security and the welfare of our citizens that we maintain a vibrant and diversified supply base which focuses on small business.

Our small business has streamlined the process for helping the VA military hospitals in acquiring 200,000 different healthcare products from over 40 different manufacturers through 60,000 annual purchase orders. In addition, our most important benefit to the government is that we do not mark up prices for approximately 90 percent of the products we provide. We allow contracting officers to negotiate fair and reasonable pricing as though they are buying directly from the manufacturer, and then we honor those prices. In the words of one contracting officer, "We love working with Alliant because you offer the same exact pricing and your team understands the government procurement process better than the manufacturers," unquote.

Challenges? My understanding is this Committee wants to understand a little bit better about how small businesses are exiting this space. I think I can provide some insight.

Our major challenge in dealing with the federal government is the time and data required prior to obtaining necessary contracts to meet the government's need. The impact is significant. It costs our company in lost revenue and lost profit. But it also delays life-saving and life-improving healthcare for our nation's warfighters and veterans. The delays are not measured in weeks or months. It is measured in years.

As examples, our products need to be on multiple different contracting tools, such as the Federal Supply Schedule, ECAT, IDIQs, DAPA, MSPVs, HTMEs, among others. All require hundreds of thousands of transactional data, and most do not require the same data. And if one contracting officer determines that our prices are fair and reasonable, the others do not recognize that determination. Each submission takes 12 to 18 months or longer. The process of their analysis can take so much that we have to resubmit data, which causes more delays. The requirements are daunting.

Our challenges also include government payments. Alliant Healthcare currently has $7.4 million in receivables from the government. Of that, approximately $4.2 million is past due. The government is not paying in a timely manner. What is interesting is Congress passed laws to ensure timely payments to small businesses described in FAR Part 32.009, but the agencies are not adhering to the law.

Congress also passed laws to require prime contractors to subcontract with SDVOSBs, but are allowed to achieve subcontracting goals that are far below the requirements. For example, the law requires 3 percent subcontracting, but the numbers are an order of magnitude below that.

In conclusion, Alliant offers the military and VA hospitals the ability to acquire healthcare products in a streamlined and efficient manner. We could do more with greater efficiency, but we need to work together to solve these challenges. The government needs to realign its contracting tools to consolidate the required data required for awarding contracts, and the agencies also need to follow the laws already in place.

This concludes my testimony. And I have provided nine items as recommended improvements.

Chairman LALOTA. Thank you, Mr. Taylor. I suspect we will be talking about some of those nine here coming up soon.

We are going to now move to the Member questions under the 5-minute rule, and I will start by recognizing myself for 5 minutes.

Mr. Spinosa, thanks again for being here.

Prior to being and serving as the Vice Chairman of ADDAPT, you have had 44 years of success in your industry, including being the co-owner and vice president of business development at East/West Industries. And we have said how the federal bureaucracy can be very difficult, 94,000 pages of rules and regulations for businesses like the ones that you represent.

Mr. Spinosa, in your experience, what are some of the unique challenges that small businesses encounter when navigating the Department of Defense procurement process?

Mr. SPINOSA. Thank you, Chairman. The challenges are, as have been stated by other testimony here, daunting. You run a small business. You do the best you can to get everything together. These regulations that come in, as I said, require attorneys to come in and help translate from legal speak to business speak and execution. And, you know, small businesses don't have attorneys on staff. It is expensive to do that and even bring attorneys in to go through this.

And in the end, you are trying to figure out—at times people come in and quote, irregardless of what the regulations have in place, they ignore some of the regulations. And the government doesn't pick that up.

You need to be able to have the regulations readily identifiable and clear to the businesses so that they adhere to that and everybody is on a level playing field. That is really what it boils down to.

Sometimes the businesses go through looking at it and signing on to contracts, as I said, that were onerous or have a lot of risk associated with it, and it is—I am going to put it in this kind of fashion. Sometimes you need to step up to those to be competitive and land the business. You need to keep the business going, because when the big gorilla in the room comes in, they sit wherever they want to sit. And that is, you know, the challenge to the regulation side of stuff.

It is also staying on top of those regulations. My feeling about the regulations is a lot of them are designed to rein in large business, and large business has a tremendous amount of resources to apply to that. The small businesses don't, and that is almost—not that there should be two different. I understand where some of the regulations are going to regulate the industry, but the onerous part of it is just driving nonvalue-added cost into the system.

If we go to the folks at the pointy end of the spear, the warfighters, and ask them, "How does this affect you?" they look at that and say, "What are we even spending money on this for? We need to spend it in the right places to get the right equipment, the right services, the right technology."

Chairman LALOTA. So small businesses like the ones that you represent don't typically have an attorney on staff to help chew through those 94,000 pages of regulation?

Mr. SPINOSA. They do not. They do not. And, you know, a side note, I worked in the time early on when everything was paper, and the books that we would bring in were huge to go look through

regulations and stuff. Electronic maybe makes it a little bit easier, but it doesn't change the issue of taking legal speak and moving it into plain language.

Chairman LALOTA. So when you have to spend money to hire counsel to help chew through those 94,000 pages worth of regulations, where do you pass those costs off to?

Mr. SPINOSA. It has got to get passed back through the parts or, you know, through the nonrecurring costs. It has got to go somewhere.

Chairman LALOTA. So with the less than a minute I have remaining in this round of questioning, what is the best solution to that?

Mr. SPINOSA. The solution, to me, is the regulation has to become more plain language. It is just too legalese.

Chairman LALOTA. And we are going to stick with costs. And, Mr. Lipsky, sir, can you discuss some of the costs associated with a company like yours when you are bidding for a federal contract?

Mr. LIPSKY. Similar to my colleague here, we spend a tremendous amount of time just qualifying for the bid opportunity without any assurances that we are actually going to be awarded that project. And I think that is what he was trying to say is that just to get in to submit a price, there is tremendous burden and overhead that is not guaranteed to be recovered that goes back to the corporation's overhead.

I also do not have an attorney on standby, although the joke in my office is that she is the second highest employee within my company.

Chairman LALOTA. Thanks.

My time has expired.

I now yield 5 minutes to my colleague from Michigan, the Ranking Member, Ms. Scholten.

Ms. SCHOLTEN. Thank you so much, Mr. Chairman.

Just as a point of privilege, Mr. Spinosa, I could not relate more readily to your fervent insistence on plain language. My team knows, everyone who has ever worked with me knows, I am a firm believer, if you can't explain a concept in plain language, you don't really know what you are talking about. I am with you 100 percent. The SBA needs to just put these regulations in much more easily understandable terms. Why say it in 94,000 pages when you can say it in one?

Again, I just want to thank all the witnesses for being here today. As the Ranking Member of this Subcommittee, one of my top priorities is to ensure that Service-Disabled Veteran-Owned Small Businesses like Alliant are able to navigate and grow in the federal contracting marketplace. They served our country. Now it is our responsibility to serve them. As such, I am committed to improving the process with which agencies award contracts and pay our hard-working small businesses what they are owed in a timely manner.

Mr. Taylor, in your testimony, you explained your company has $7.4 million in receivables from the federal government and, of that, $4.2 million is past due. I am so sorry about that.

As a business delivering lifesaving and life-improving technologies to VA and military hospitals, how do delays in payments impact your business and our servicemen and women?

Mr. TAYLOR. Thank you, Ranking Member Scholten. The issue is that it impacts us disproportionately to how it impacts larger businesses that have access to larger credit facilities. What happens is, when we deliver a product, say, an operating room table, it gets received, but then the documentation doesn't get processed in a timely manner. And it can take a month to get someone to fill out the documentation before their clock starts. So the clock doesn't start when the operating room table shows up. It starts when they have gone through the bureaucracy of receiving it.

So it is an unfair position for the government to take. They have received the products. We have already paid for the products, and we are under tremendous pressure from our suppliers to pay on time. And so we have to borrow millions of dollars so that we can pay our suppliers in a timely manner so that we can continue to do business. And all of that detracts us. That cash is going to payables rather than innovation. It is going to payables instead of new salaries.

And so that is where it impacts us is in how can we provide better, more cost effective, and streamlined service to the government.

Ms. SCHOLTEN. Thank you. That is incredibly helpful.

Another issue that I consistently hear about as an impediment to small businesses contracting is agency unique requirements. These can be barriers to growth for companies already in the market but who don't have the capacity to meet requirements for new agencies, even though they are already a government contractor.

I'll be very brief, and you all can be brief as well. This is for all of you, but beginning with Mr. Taylor, can you speak to your experiences in meeting the specific requirements when contracting with different agencies?

Mr. TAYLOR. Congresswoman, the issue is that it is not only agency specific, it is contracting tool specific, and then it is contracting officer specific. So each contracting officer is allowed to interpret the language in the federal regulations independently of others, and each contracting tool has separate regulations and requirements separate from others. So there is no consistency at all on how to work with each federal contracting or contracting officer.

Ms. SCHOLTEN. Thank you.

Mr. Lipsky.

Mr. LIPSKY. So I am a builder, and we build for multiple agencies. It just behooves me that if I build for one agency, that the procurement, the payment terms, the change order process vary from agency to agency. As soon as I figure out one agency—and we are having a similar problem with New York State where I just don't understand why it is not a unilateral way to do a change order or unilateral way to get a procurement. Everyone does it a little differently. And to my colleague's credit, different agencies handle it better and pay faster than others.

I will yield my time to Mr. Spinosa.

Ms. SCHOLTEN. Do you have a few thoughts in the remaining seconds?

Mr. SPINOSA. I can only say—I will give an example. In the test area, you always look at the assessors and find out are they out there to do a gotcha or are they out there as a learning and move forward and keep the system moving forward.

I will give an example. You go to different folks where you have a part that you have been making for years, and it should go right through the whole procurement process and the production lead time, et cetera, testing. You go to some folks, and they delay and delay, delay getting stuff in that you have been making for decades. And to what end? It just adds cost and cost and cost to the system going back and forth.

Ms. SCHOLTEN. Thank you.

Chairman LALOTA. Thank you.

I now recognize Representative Ellzey from the great State of Texas for 5 minutes.

Mr. ELLZEY. Thank you, Chairman LaLota, my shipmate from the Naval Academy. Thanks for having this hearing today. And thank you all for being here today.

Small businesses make up 50 percent—nearly 50 percent of all jobs in the United States. And despite claims from agencies that they are prioritizing small businesses, the numbers show otherwise.

While the total value of contracts issued to small businesses has generally increased over time, since 2010, the number of small businesses receiving prime contracts from the federal government decreased by more than 50 percent. In that same period, the number of small businesses entering the federal contracting system has also decreased by 60 percent.

The Biden administration has only made things worse. And in 2021, 27 percent—27.2 percent of contracts went to small businesses, while in 2022, only 26.5 percent of contracts were issued to small businesses.

Bureaucratic regulations and red tape hurt small businesses. Small business contractors play a vital role in America's industrial base and national security apparatus, and stifling red tape has caused a number of small businesses receiving federal contracts to significantly decrease.

And while I mentioned the Biden administration, I want to point out that after administration after administration, it doesn't matter which party they are from, they stay. They outlive those of us at this dais and they outlive administrations. And the only reason they exist is, as I said yesterday, a self-licking ice cream cone, and they get ahead by adding more burdens to you because they are getting a paycheck every 2 weeks. So they don't make it easier for small businesses to succeed.

And when the balloon goes up, as we are looking at a time of unprecedented—at least since 1938—potential for worldwide conflict, the primes have their roles to play in providing for our military and industrial might. However, they rely on the subs, like you, to make sure that on-time delivery of those weapon systems is ensured.

In my own district in Red Oak, Texas, is Qarbon Aerospace, which is providing the fuselage and the wings for the Boeing T-7. Boeing is the prime, but without Qarbon Aerospace, they couldn't get it done. Without that workforce, they couldn't get that done. Without the materials that they are responsible for the supply chain of achieving, they wouldn't get that done.

Now, Qarbon Aerospace can afford those attorneys that we have talked about and the manpower and the ability to navigate this extremely expensive process of providing for our nation's infrastructure, but you guys don't.

And so while the bureaucracy lives on administration to administration, you guys struggle to try to even turn a living. But when the balloon goes up—and, by God, I hope it doesn't. But if it does, the only people who are going to be able to scale up to provide increased production of any weapon system we have is going to be relying on you because the primes are already tapped out.

So pulling back, clawing back what the SBA does, what the banking industry does is essential to success of American businesses, because we are from the government and everything looks like a nail, and all those nails are the same size. So when you talk about the banking industry and too big to fail and the big boys up high adhering to the Basel Endgame and they can provide for lawyers to negotiate that, our small community banks can't. And it is exactly the same way in government contracting, specifically for our military.

So access to capital is great for the big guys and for the primes, and it is almost impossible for you because we have made life so difficult for the small banks that you bank at, your community banks, you can't get capital to provide these subcontracts that you have signed up for. So this is a real problem that we have to get through.

And I would like to ask, Mr. Spinosa, can you explain the importance of subs to national defense very quickly, 30 seconds?

Mr. SPINOSA. Subs to the primes are their primary blood flow of parts. Whatever prime you pick, the small businesses are probably 60 to 70 percent of what they are seeing, similar to what DOD sees, because it is the same type of stuff, the same type of parts, the same type of services.

Mr. ELLZEY. Mr. Taylor, I know that you are the so-called Democrat witness here today, but I see three men up here with small businesses whose job is for them to provide for their families and for their communities.

First of all, thank you for your 17 years in the Air Force. I am not sure why it wasn't 20, but thank you for doing it. And I see a man who is trying to make money and provide for his small family. So there is not a chasm here of Republican versus Democrat or Biden administration versus any other. You have a bureaucracy issue that prevents you from providing in a way that would add real value to our nation's economy and to your bottom line.

And so I would like to thank all of you for being here, and this is something we need to address sooner rather than later so that you all can be successful and so can our economy.

Mr. Chairman, I yield back.

Chairman LALOTA. Thank you, shipmate.

I now recognize my colleague from Kentucky, Representative McGarvey, for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman.

I want to thank everybody for being here today. Really highlighted the challenges you all face and giving us insight in this

Committee and do what we want to do, which is improve contracting for small business owners.

We hear over and over again—and I know I hear it from constituents in Louisville, Kentucky, these business owners—the procurement processes for these business owners can be incredibly burdensome. And that is because when the small businesses apply for the federal contracts, they have to spend incredibly valuable time, expend limited resources, and parse each agency's prerequisites necessary for certifications and required skill sets to even determine their eligibility. It is only after you do all of those things that then you get to write up your formal proposal.

And so, Mr. Taylor, you mentioned how tough it is to find the time and resources to do all the work you need to do even to have the opportunity to apply. You also talked about how federal agencies fail to meet the contracting goals for service-disabled veterans, who I am sure face additional barriers to applying.

So, Mr. Taylor, when the SBA recently took over certifications for service-disabled veteran small business owners from the Department of Veterans Affairs, how was your experience with that transition and what is the SBA's process like?

Mr. TAYLOR. Congressman, I have a very recent experience with the transition. This was probably our sixth certification process as an SDVOSB, and we just went through the process in January, and we submitted our data and all of the information. It was quite a bit of information that they wanted, but we are happy to supply it. And, shockingly, we received our certification in 2 weeks. And so that is months improved over what it was when it was in the VA.

So the change to the SBA for that certification process has been, in my opinion, one of the best examples of what can be done.

Mr. MCGARVEY. We like good news up here, so I appreciate that.

Mr. TAYLOR. That is good news.

Mr. MCGARVEY. I appreciate that. And please let us know how that continues to work and if it is not.

So looking back in 2021, the Biden administration set a goal of increasing procurement for disadvantaged small businesses, aiming for 15 percent by fiscal year 2025, and requiring agencies to review category management practices, encourage new entrants in the federal marketplace, and include small business contracting success and senior official's performance goals along with some other reforms.

This is for the whole panel. Anybody gets to answer. I would like any of you to answer who want to. Has this goal translated into action? And have you and your colleagues in the industry noticed more opportunities?

Mr. TAYLOR. Congressman, I can speak a little bit.

The SBA and the focus on small business at this level from legislation has been exceptional, but the agencies do not live up to those standards and requirements. Just like the subcontracting goals with SDVOSBs, there is a lack of authority, it seems, for the small business representatives in the government to effect the change. So I think the laws and requirements are there, but the follow-

through and the authority to get large businesses and the government to follow through isn't sufficient.

Mr. MCGARVEY. Anybody else?

Mr. SPINOSA. I'd like to pass a comment on that, an example. The SBA works very hard to make things happen. And, obviously, you look at the metrics of performance are there, but in terms of what it boils down to, the execution, the implementation at the agency level, the service level, if you get a request for a quote that has gone out, full and open competition, and has a very short fuse on it, response date, small businesses are challenged to meet that. And to me, my opinion on it, when that comes out, it is really destined. They already figured out who they want to award it to. They are just trying to get the check boxes knocked off for, you know, okay, I tried. I put it out there. You know, we are going to get some responses from somebody, but, you know, it is destined for a large business. Even though they would want to, you know, destine it for a small business, the service itself doesn't make that happen.

Mr. MCGARVEY. Thank you.

I see I am out of time. So, Mr. Chairman, I yield back.

Chairman LALOTA. Thanks very much.

Many Long Islanders consider what is north of Yankee Stadium to be upstate. While that might not be the case, somebody who truly represents upstate New York, my good friend from New York, Mr. Molinaro, for 5 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman. Most of us think, you know, you live on an island. It should likely worry many that they are surrounded by so many New Yorkers, but I do appreciate, Mr. Chairman, this hearing today. It is somewhat timely on a number of fronts.

But for me specifically, yesterday I participated in a round table discussion with my colleague, Representative Chris Pappas, along with Department of Defense Office of Small Business Programs to discuss actually with the providers, the government entities, the employees within the federal government expected to administer programs to support small businesses. We discussed at length ways to better assist small businesses in navigating DOD's many services, resources, and contracts.

To a conversation had just a few moments ago, I too, having served in local government, can appreciate, although not from the business perspective, but in local government we speak in plain talk, and we have regulations that are very clear. It is one of the reasons that I cosponsored and led the POST IT Act, which is an effort adopted and passed by this Committee in the House to be more transparent with small businesses so you understand how to access and navigate very complex federal regulations.

From the conversation yesterday, it is very clear—and you, of course, reinforced—the complexity of contracting rules and regulations. Now, for communities like mine in way upstate New York, rural and underserved areas like those within upstate New York, small businesses rely on partnerships with the Small Business Development Centers and APEX Accelerators. These each provide necessary lifelines and assistance to small businesses.

In Binghamton alone in my district, the Binghamton SBDC advised over 26,000 clients, created over 11,000 new jobs, and

accessed nearly $600 million in new capital. It is clear that SBDCs are really helpful, but we also know that knowledge of and partnership with SBDCs can become a bit of a challenge.

So to both Mr. Spinosa and Mr. Lipsky, to the extent that you have had experience with SBDCs—and I know that you have—what has been that experience? What understanding exists of what SBDCs provide, and what support do they provide? And then to the extent you want to offer some recommendations on how they can approve their work, we welcome that.

Mr. LIPSKY. Yes, I can comment on this.

So associations like the Associated General Contractors also has the New York State Chapter, which also represents a lot of the constituents upstate as well. The problem that I see with small businesses, which are the second tier subcontractors and suppliers, is that governments have competition to private. So if there is a opportunity to get a deposit in advance and to get your money out on something, they are going to go for that versus entering a State agency or federal contract.

So I think that the SBDC, as far as the partnerships, the small business partnerships, helps try and bring those people into the market, but also poses a challenge because you guys have fierce competition on the private side.

Mr. MOLINARO. Sure.

Mr. Spinosa?

Mr. SPINOSA. Yes. Experience with the SBDCs as well as the MEPs are important, very important from the manufacturing side. I believe overall they are trying to do a good job. The problem we run into is, again, funding disappears to those organizations very quickly.

I will give a quick example. Cybersecurity, trying to achieve CMMC evaluation, starting the process to become cyber secure. I know that the MEPs have run out of funding to put in to that effort, and that is—Mohawk Valley is a cyber secure expert area on the MEPs, and they have run into that issue time over time over time. And that, again, just delays small businesses getting the process started, getting themselves ready and entering, because the cybersecurity aspect is being pushed as a barrier to entry from both the government as well as the primes. If you don't get yourself cyber secure to 800-171 or CMMC, you are not going to be able to continue, even if you have something that you do currently. So——

Mr. MOLINARO. Appreciate that.

My district is home to the Lockheed Martin facility in Owego, New York. That is in upstate. From my understanding, there are a number of ADDAPT Members who have worked on two of Lockheed's Owego's projects, including the Air Force combat rescue helicopter.

So I just want to restate what we all know: The role of small businesses as relates to DOD contracting and support for our defense, our national defense, critically important; 70 percent of new jobs created by existing small businesses helping navigate the regulatory regime, critically important.

And thank you all for testifying today.

With that, I yield back.

Chairman LALOTA. Thank you very much.

I now recognize a fellow freshman from the free State of Florida, Mr. Bean, for 5 minutes.

Mr. BEAN. Mr. Chairman, a very good morning to you, and good morning, Small Business Committee. And to our witnesses, what an honor it is to welcome you here.

We had a hearing yesterday, had a hearing yesterday, and it was all about just regulations on small business. And the National Association of Manufacturers say 12 percent of our economy—and, of course, small business is the backbone of our economy—12 percent is based on just trying to comply with regulations.

So hats off to each of you running small businesses. It is harder than most people know. You are usually the first one to get there, you are the last one to leave, last one to get paid. And nobody sees all the work behind the curtain that you do.

And to listen to how hard it is to apply for a government contract, what if—how about this? I want you all to just play along with me. What if there was a world in which the government had to compete with small businesses and the government itself had to bid on a project to show that they could do it better than you? We know they can't, and many times small business does it better. What if? Wait a minute. There is such a bill. It is a Bean bill. It is called the Yellow Pages bill, and it says this: If a government is going to provide a service and there already is a firm that will provide that service, then they need to bid themselves, and let's see apples to apples and see what can be saved.

I have got good news, Committee Members. I have saved—I have saved a spot for you to cosponsor this legislation. We can all go hand in hand together. And so check it out, because that is the world we want to live in if we are ever going to get spending and just get everything under control.

I asked yesterday, I asked yesterday to the firms there, has it ever been this bad? That answer yesterday—well, in fact, I will tell you what they said yesterday after I hear from you guys. I don't want to spoil the answer of what these firms from across America told me yesterday, unless you watch C-SPAN, which you probably don't.

But let's start with Mr. Lipsky. Mr. Lipsky, you are an outlier, because most people that are from New York move to Florida, but you were in Florida and then went back to New York. I totally understand because you went to school in Jacksonville, and hats off—I went to Jacksonville. You went to the University of North Florida. We are kind of archrivals. I will bow down. You won the River City Rumble this time.

Has it ever been this bad, in your opinion?

Mr. LIPSKY. It is pretty bad. You know, just qualifying for some of these programs—I mean, we just heard one niche, which is cybersecurity, to get even entered into submitting a proposal is pretty bad.

So I will yield my time to some of my other colleagues who might be able to weigh in——

Mr. BEAN. Mr. Spinosa—so, for the record, you said it is pretty bad. So we will take that as an answer.

Mr. Spinosa, what say you? What say you? Has it ever been this bad, regulatory——

Mr. SPINOSA. It has not been this bad.

Mr. BEAN. It has not?

Mr. SPINOSA. It has not been this bad. It is hard to explain. The confluence of all the different things that are happening—and to go towards your bill for a moment——

Mr. BEAN. Yeah.

Mr. SPINOSA.—the government has tried to come out and do things and say, oh, we are going to do this better than industry can do. And every time they have gone through that, they found that they can't do it as innovatively, as effectively, as economically.

Mr. BEAN. Yeah.

Mr. SPINOSA. And the flip side is the organizations themselves try to show obvious—you don't want to show failure on things, so they try and make it look like a success.

Mr. BEAN. Yeah. So if you were a Member, you would sign on to that bill is what you are saying?

Mr. SPINOSA. Absolutely, absolutely.

Mr. BEAN. And in small business you look at every little number. You look at every little number, and that is why you run a tight ship.

Mr. Taylor, what say you, my friend? Has it been this bad before?

Mr. TAYLOR. So I've been doing this for 20 years. I have seen a lot of ebbs and flows, and—I'm sorry. And so I think the—the one thing that makes this period worse——

Mr. BEAN. Yeah.

Mr. TAYLOR.—is the direction that we are going. We seem to be heading in an even more difficult direction, and that—that's what causes me the greatest concern.

Mr. BEAN. Gotcha. Let me tell you what they said yesterday. Yesterday, all of the firms that were represented—and they were small oil and gas providing energy—they said it has never been this bad, and they have been in business a long time.

I am almost out of time, and I talk way too much. I appreciate you all coming forward, appreciate you all standing firm. You represent—I know some of you represent—right now you are representing just thousands of small businesses across America that are struggling to make it. You are fighting supply chain, getting good help, you are fighting inflation. And so we are proud of you. Hang in there. Help is on the way.

Chairman LALOTA. Will the gentleman yield for a question?

Mr. BEAN. Mr. Chairman, you are the Chairman. I will yield to the Chairman.

Chairman LALOTA. Mr. Bean, the Bean bill. What is the bill number, sir?

Mr. BEAN. You would think I would know that.

Chairman LALOTA. We are going to have a second round. Maybe we can——

Mr. BEAN. 10-4. Thank you, Mr. Chairman. We will get it to you.

Chairman LALOTA. I now recognize fellow freshman, the newest Member of the Small Business Committee, but with a wealth of experience, Ms. Maloy from Utah, for 5 minutes.

Ms. MALOY. Thank you, Mr. Chairman. There is a lot of freshman energy, a lot of New York energy in this room today. I don't know if I can rise to the occasion. I am going to do my best.

I represent Utah, which, for all of you in this room, is very far west of western New York, also west of Florida. But Utah is a really entrepreneurial State. We love our small businesses. We are small business friendly, but I have concerns.

To Mr. Bean's point, things are harder than they have been in the past for small businesses. I appreciate you being here to testify about your experiences and what you are seeing.

I am going to give you a unique opportunity today. We are the Small Business Committee. We are Congress. I am going to give you a chance to give Congress a little bit of advice.

I've only been here for 2.5 months, and I know people who are not in Congress all know how we should be doing our jobs. So I am going to give you a platform to talk about it.

My first question—and I am just going to go right down the row—is, how can Congress incentivize prime contractors to collaborate with small businesses in infrastructure projects?

I know it is tough for small businesses to get into these federal contracts because the—the prime contractors already have a lot of the market. What advice would you have for us to help make that better?

Mr. SPINOSA. Thank you very much, Congresswoman. I would say that, obviously, the regulations need to be trimmed and—I am going to say—common language so that the businesses can address those. But more to the point, I am—there is a—there is a short-term issue, which is the businesses are in tough times right now. I'll give you an example. Fixed price contracts, that—long-term contracts that the government has done to try and control things, businesses applied normal incrementing of pricing as you go along based on the—I am going to say on assumptions. We are in a time of crazy interest rate increase that is killing small business. And the primes and the government are not going back and allowing the businesses to do equitable adjustments based on that.

That is why in my presentation I talked to progress payments, I talked to allowable interest and equitable adjustments that are desperately needed by small business to handle the times that we are in right now.

If you want to adhere to fixed pricing, you have to take care of areas that are out of the norm. Everyone went together to put pricing together and quantities together. We put the facilities in place to do stuff. You can't hold them—hold feet to the fire and say, oh, you quoted a price based on interest rates that are long gone. It has got to be handled.

Ms. MALOY. Okay. Thank you, Mr. Spinosa.

Mr. SPINOSA. Thank you.

Ms. MALOY. Mr. Lipsky?

Mr. LIPSKY. Essentially, what I am hearing is, what advice do you have to fix the problem.

Ms. MALOY. Yes.

Mr. LIPSKY. And my—as much as I can get into cash flow and regulation tape, I think the two big pieces of advice that I can contribute today is to continue to have open discussions with the pri-

vate sectors and the people who are affected, which is what we are doing today, and to listen to the partners such—and the associations, such as the Association of General Contractors. We are a great resource in order to provide representation on hundreds of thousands of employees and their—and their—and all the subcontractors that they represent. That would be my biggest advice.

Ms. MALOY. I just want to make sure we put a fine point on what you are saying. So you don't feel like the federal government is currently listening adequately and responding to your concerns?

Mr. LIPSKY. I think that this is a very good start. I haven't personally seen it myself previous to this, but I appreciate the open invitations to be here today.

Ms. MALOY. I also don't think the federal government is adequately listening, so thank you for bringing that up.

Mr. Taylor?

Mr. TAYLOR. Congresswoman, the first point I want to make is I didn't show up here today, nor do other small businesses, look for handout.

Ms. MALOY. Right.

Mr. TAYLOR. I firmly believe that we offer the federal government innovation, cost effectiveness, the ability to do things that large businesses cannot do. We are more responsive, we are faster, we are more adaptive. I am not asking the government to say, here, here's something for you.

What I would recommend is that I think there are laws and goals in place, but the large businesses and primes need to be held accountable to those. So, for example, if the subcontracting goal is 3 percent and they are achieving .3 percent, something needs to be done. And it is not just to throw a favor to me. It is to give me a chance, to give other small businesses a chance, to compete fairly. That is all I ask for.

Ms. MALOY. Thank you. I yield my time, Mr. Chairman.

Chairman LALOTA. Thank you very much. As the gentlelady said, there is a lot of freshmen energy in this room. And following that, fellow freshman from Michigan, Mr. Thanedar, for 5 minutes.

Mr. THANEDAR. Mr. Chair, I am going to pass.

Chairman LALOTA. Excellent. We are going to have a second round. So lucky you, we can get to you in the second round.

Mr. BEAN. Mr. Chairman?

Chairman LALOTA. The gentleman is not recognized just yet.

Mr. BEAN. 10-4.

Chairman LALOTA. We are going to start a second round for 5 minutes, and I am going to start my 5 minutes by yielding a minute to the gentleman for the purposes of expanding upon the bill to which he referred.

Mr. BEAN. Well-played, Mr. Chairman, well-played. Very nicely done.

It is H.R. 2744. It is called the Freedom from Government Competition Act. And it just says government needs to verify that they can do it better than small business. We know they can't.

So thank you, Mr. Chairman. H.R. 2744.

Chairman LALOTA. The gentleman yields back, and we hope that at least 10 more co-sponsors are going to come on today.

We do a lot in Congress talking about China. And when we focus on small business, we don't always think there is a correlation necessarily between small businesses and China, but indeed there is, especially with our defense subs.

The defense subs have a great impact—despite being small businesses, have a great impact upon America's most strategic competitor, China. And rightfully so, here in Congress, we spend a lot of time focusing on ways to outperform China. In fact, later on today in the Armed Services Committee, I have a hearing on outpacing China through innovation.

And, Mr. Spinosa, back to you. I understand small businesses are 16 times more likely to create a patent than their larger competitors. So my question with respect to China, innovation, patents, how can the DOD better harness the innovation of small businesses in the defense industrial base?

Mr. SPINOSA. I think it kind of boils down to—I am going to give you just a couple of words on this. Number one is transparency. Work together with us. That is the important aspect there. It is—it is so close to the vest that there are things there that will, even in the commercial area, that has application to help things out, and they are not getting there because there is no transparency.

I think the other aspect—I am going to call it this way: We—the government needs to be less adversarial. The DOD needs to be less adversarial with the small businesses and be more parental with their, look, we have got a problem here we need to handle, and let's take care of that.

Because when that does happen—and it does happen within certain—certain groups. There is certain services and their program offices that have that—that culture. When it happens, it is wonderful. Things happen quick, happen effectively, and happen economically.

Chairman LALOTA. Moving back into what we talked about in the first round with respect to the bureaucratic burdens that the federal government places upon you, would you agree that if we relieved you of some of those burdens, we would free you up to even be more innovative than you already are?

Mr. SPINOSA. Quite simply, if a business is spending X amount of money just trying to keep up with the regulations and that kind of stuff, it is money for small business that can't be applied to its facilities, to getting the right people, the right engineers, et cetera. As I said, it is nonvalue-added costs that just don't do anything for our warfighters or the government or whatever the application.

So it needs to be looked at and said, what do we really need. As a small business, every day we look at different costs. We say, is it a—is it a I got it, I need it, or is it a like, or is it, do I really need it?

Chairman LALOTA. That sounds like some of the dialogue I have with my three children.

Nevertheless, if we can make one more connection, if we can agree that relieving you of some of these regulatory burdens leads to more innovation, would you also agree that more innovation allows us to greater outpace China?

Mr. SPINOSA. Absolutely. I mean, there is no question about our innovativeness. As I said in my testimony, most of the innovative technology comes out of small business. That is where it is. And we are the ones that are creating it and keeping things moving forward. Look at the different systems that are out there.

I will bear one comment on things that kind of hamstring us. Businesses have been asked to become more commercial in their approach to build systems that are close to ready or show the proof of concept to the government. Most recently, the FARA program, both on Bell's side and Sikorsky's side, they have come to the small businesses and said, help us invest in the program, let's go. And I get it. It is a competitive program. But when it gets cut out right out of the bottom, it hurts small business.

Chairman LALOTA. Yes.

Mr. SPINOSA. I don't know how they thought about that. You know, that is that whole supply chain. It is not just the business itself, but everything that goes on underneath it, the tier 2s, the tier 3s.

Chairman LALOTA. That is good insight. I appreciate you sharing it.

My time is about expired. I am going to now yield 5 minutes to the Ranking Member.

Ms. SCHOLTEN. Thank you so much, Mr. Chairman.

Well, the principal job of this committee is to provide some oversight to the SBA. My husband will often joke, what did the SBA do wrong today, when he knows that we have a committee hearing. We can spend a lot of time on it. But I also find a lot of value in talking about what's working.

You all are successful small business owners, and the SBA has played a role in that. What good is the SBA doing and how can we ensure that it continues to do that good work? We will start with you, Mr. Taylor.

Mr. TAYLOR. Congresswoman, I think over the years, I have seen what the SBA does as very positive. I see a lot of good that comes from the SBA. My only issue is that they don't have enough authority or standing in the federal agencies to—to execute the laws and the requirements that they are giving to the industry. So I don't see a lot of dysfunction in the SBA. I see them as kind of the beacon in the forest for helping small businesses.

Ms. SCHOLTEN. Yes.

Mr. TAYLOR. I just wish that they had more authority. And I don't know if it is a desire, but something needs to happen so that the voice of the SBA carries more weight.

Ms. SCHOLTEN. Thank you.

Mr. Lipsky?

Mr. LIPSKY. My experience with the SBA is a little limited, but I will comment on some of the private clients that I have who use the SBA, one of which is James Bonanno of the Tap Room, who is—who owns a restaurant on Long Island that you may know of. He uses the SBA quite effectively in getting his funding to have his construction projects and restaurants expand in the Long Island, New York, area.

So I will yield my time to Mr. Spinosa.

Mr. SPINOSA. Congresswoman, I think the SBA is not the one to blame on this. I think, you know, obviously, regulations—we would like to see regulations, more plain language.

But more to the point, it is more about the actual implementation. And, again, that, to me, boils down to my comments from the Secretary of defense. All the points were there. The recognition was there. How it gets down to the troops, how—when I say the troops, the services, the procurement, the acquisition people—and gets implemented, that is where it all—the rubber meets the road. Sometimes it is great and it is wonderful, and other times it is like, oh, my God, what are we doing here again?

Ms. SCHOLTEN. That is more helpful than you know. Thank you.

That is it for me.

Chairman LALOTA. Thanks so much. I appreciate you yielding back.

We are going to wrap things up, but I want to say this. We spent a good 75 minutes here together having a good dialogue. This is probably the most effective 75 minutes I have had in Washington in quite some time, which isn't always saying much. But truth be told, this dialogue that we are having is quite important.

I appreciate the witnesses for having taken their time to prepare their testimony, prepare the issues that are important to your individual constituencies, and coming here to Washington to inform this committee of that. I want to say thanks to the professional staff for preparing as well.

You know, these things don't happen without a lot of folks on this side. And Grady Austin, my guy back there, helps me out a lot with things as well. I want to say thanks to him.

And without objection, Members have 5 legislative days to submit additional materials and written questions for the witnesses to the Chair which will be then forwarded to the witnesses. And I ask the witnesses to please respond promptly should you get that correspondence.

And if there is no further business, without objection, the Committee is adjourned.

APPENDIX

Testimony by ADDAPT - Joseph D. Spinosa, Vice Chair

Thank you for allowing ADDAPT to testify today.

I will be presenting points which have been collected from member companies of ADDAPT. They represent Tiers 1, 2 and 3 of the supply chain.

In order to set a baseline, let me reference the following points that were made in a message by Secretary of Defense Austin.

"Small Businesses account for:

- 99% of all employer firms and 44% of our nation's economic activity.
- Small Businesses comprise more than 70% of the companies that do business with DOD.
- They keep our military forces combat ready, with critical parts, cutting edge technology, and top-notch services.
- They fortify our defense supply chains in times of crisis.
- They ensure our military has the best capabilities to keep us safe.
- The most innovative minds in the country come from smaller companies.
- Despite efforts, the defense industrial base has declined by over 40% in the past decade.
- If we do not work to reverse the decline of small business contracting, then the industrial base that equips our military will weaken.
- If we do not take action, we risk losing mission critical domestic capabilities, stifling competition and innovation, and potentially weakening our supply chains."

In fact, Small Businesses that support aerospace and defense efforts are struggling to survive and stay relevant. Small businesses are faced with many challenges. We have categorized our presentation of challenges into two basic classes:

1. Overarching or primary issues
2. Breakdown of system or secondary issues

Overarching or primary issues

Regulations - are many and complicated, leading to the need to hire costly attorneys to translate regulations for small business owners. Small business owners do not employ full-time attorneys on staff. Many small businesses agree to contractual terms and conditions that are too onerous or risk intense, because they have no choice.

Financial issues - arising from the economic environment, resulting in high interest rates, limiting access to capital.

There is a need for equitable adjustments to be available for multi-year fixed price contracts to counter unprecedented inflation increase and the drastic changes to the markets such as raw material, process and finishing, and power.

Consideration should be made for Interest Costs to be considered as "allowable costs" where progress payments have not been extended as part of the contract consideration. It is difficult for Small Businesses to be extended progress payments or milestone payments as part of contracts from the government or primes.

There is a need to maintain the waiver on Progress Payments Rates and encourage Prime OEMs to extend that to Tier 1 suppliers. Also request the Progress payment Threshold to remain at 95% for Small Businesses.

Cybersecurity - has added a new wrinkle to the challenges. We understand and support that this is a required effort, but it is expensive to implement for a small business. According to our members, to accomplish and implement CMMC for a small business can run from $200,000 to $500,000. For the average small business this is a considerable amount and is growing. This is just to be allowed entry into the system to provide a quote.

Who will ultimately bear the cost for this? If it is added in the cost of items being quoted, will the small business be deemed noncompetitive? Furthermore, at the lowest levels of the supply chain having to implement CMMC can be too expensive or beyond their capabilities, leading to a "death spiral" of the DIB. Is there a "Right sized" solution to protect the small businesses of the DIB while still protecting the data integrity of our warfighting apparatus?

Will there be sufficient numbers of assessors on hand to perform certification to address demand?

Workforce development - Pandemic effects have reduced the workforce. In order to recover, defense manufacturers need programs that encourage and assist those who wish to be employed in the industry. Grants for Training, Certification, and Transportation are needed to develop that workforce.

Breakdown of system or secondary issues

Other Contracting issues –

- The release of multiple small requirements over the course of a few weeks for the same NSN, instead of reviewing user demand and combining for a larger procurement quantity which will ultimately save DOD significant dollars. Very few contractors can manufacture 1 ea. or 2 ea. of anything without incurring extensive costs. Lot charges for materials, processing, and finishing, as well as quality assurance costs, along with general inefficiencies of starting and stopping a work order make small quantity buys 2-3X as expensive as larger quantities.
- Releasing multiyear Indefinite Delivery, Indefinite Quantity requests for pricing with a very small, guaranteed purchase quantity, negotiating pricing for multiple years, and then not buying any more than that initial guaranteed quantity or contract value. This drives significant overhead and opportunity costs with no return on investment for the business and no long-term savings for the government
- The Government's proclivity for low-quantity spot buys over long-term contracts. This makes it difficult for contractors to hold inventory in support of anticipated requirements, to plan economical production lots, and to invest in facilities and employees. Drastic increases in raw

material lead times are driving corresponding increases in Reorder Lead Time. Smaller lot sizes are negatively affecting pricing. Forecasting data would be immensely helpful if DOD could provide consistent forecasting to industry. This would help Government Contractors make better decisions on material buys, and stock, which ultimately would save everyone money and time.

- In some cases, contractors receive multiple low-volume inquiries for the same item, rather than combining the requirements for price advantage.
- Extensive delays in the approval cycle for First Article Tests and Production Lot Tests – even when the contactor has been manufacturing the contracted item for decades.
- Extensive delays in reviewing Post-Award Requests, which is impacting the contractor's delivery ratings to the Government. Many of these Post-Award Requests are required based on the aforementioned issue with First Article Inspection and Production Lot Test approval prior to shipping production items.
- Forecasting data: would be immensely helpful if DOD could provide consistent forecasting to industry. This would help Government Contractors make better decisions on material buys, and stock, which ultimately would save everyone money and time.
- Reduce time it takes and process to gain Joint Certification Program approval.
- The breakout initiative by use of Source Approval Request package submittals is an amazing program. Currently DOD manages most NSN's, but many are still managed directly by the services. Some of these services are difficult to deal with when it comes to Source Approval Request package submittals. Services state that they don't have the budget to review these packages, so they pick and choose what they want to review. With the current climate, DOD overall should be looking to foster competition. They have a process to save significant costs, but do not use it because of capacity constraints.
- Communication. VERY difficult to get folks on the phone. Since the pandemic, this has worsened. This lack of being able to get in touch with government POC's means bids don't get responded to, improper assumptions are made, and risk is moved closer to the point of delivery, which affects readiness.
- Bidding on a solicitation that never gets awarded. Months, or a year later, the government releases a new solicitation for the same part. The original solicitation is still open. Similarly, no response from buyers when asking for status on bids. Quoting bids the government has no interest in awarding or resourcing is non-value added work which drives overhead costs, and increases costs on EVERY subsequent delivery to the government.
- Full and open solicitations with short expiration dates. This reduces competition and is seen as a shortcut by the government to say it's an open competition, when the outcome is pre-determined. These anti-competitive solicitations return no value to the taxpayer.
- Difficulty in navigating the SAM and FBO websites, and difficulty communicating issues with cFolders (part of Defense Logistics Agency (DLA) Internet Bid Board System). Passwords expire in 30 days without warning and need to be reset by phone. Typically, the phone queue is between 65 and 90 calls, and wait times could be 90 minutes, or more. This makes it near impossible to retrieve technical data.
- Regarding ITAR, extensive delays in reviewing and issuing export licenses for technical data and personnel.

As we have seen there are many issues that challenge Small Businesses. It has become very difficult for small businesses in the aerospace and defense industry to make a good living and continue to invest in their companies to provide for the kind of stabilities and capacities that we need as the country moves into the future.

Once again ADDAPT thanks you for this opportunity to testify.

Written Statement of

Joel Lipsky
President
Lipsky Construction

On behalf of

The Associated General Contractors of America

to the

United States House of Representatives

Committee on Small Business

Subcommittee on Contracting and Infrastructure

For a hearing on

"Challenges Facing Small Business Contracting"

February 15, 2024

AGC
THE CONSTRUCTION ASSOCIATION

The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

I. Introduction

Chairman LaLota, Ranking Member Scholten, and members of the Committee on Small Business' Subcommittee on Contracting and Infrastructure, thank you for inviting me to testify on this vitally important topic. My name is Joel Lipsky, and I am the President of Lipsky Construction, an active member of the Associated General Contractors of America (AGC) and the Associated General Contractors of New York State.

AGC is the leading association in the construction industry, representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more. In 2020, 91% of firms within the construction industry had 20 or fewer employees.[1]

Lipsky Construction is a third generation Construction Company located on Long Island, New York. My grandfather started the company as a residential home improvement contractor in Levittown after he served in World War II. My father and my uncle were his helpers and apprentices passing the trade down. My father and my uncle are largely credited for growing the business to where it is today, moving away from the residential sector and more into the commercial sector. Within the last few years, the business was again handed down from father to son and is now run by my brother Alex and myself. Today we have over 12 construction management professionals who work within the organization. We work in collaboration with some of the region's most respected design professionals in the New York area and includes both the private and public sector. Currently I sit on the New York State Associated General Contractors Building Board committee and find myself to be an advocate for practical construction solutions in a complex industry.

In my testimony today, I will discuss the challenges and opportunities facing small businesses like ours. In particular, I will discuss the difficulty in adequate cashflow, the regulatory burden facing small businesses, and workforce shortages.

II. Construction Project Cashflow

One of the greatest challenges contractors face with federal agencies' is the disruption of cashflow on the project. Cashflow is critical, and in my business, we view it as more important than profitability. Profitability lies at the end of the project. However, without sufficient cashflow, a construction project will never start and a company will never reach the finish line where profitability resides.

The critical role of cashflow in construction projects cannot be overstated, and it is imperative to address the challenges faced by contractors, especially when working on government projects. The government's fiduciary responsibility to not release funds until work is performed places a

[1] United States Census. ECNSVY Business Patterns County Business (2022). Available at: https://data.census.gov/table?q=CB2000CBP:+All+Sectors:+County+Business+Patterns,+including+ZIP+Code+Business+Patterns,+by+Legal+Form+of+Organization+and+Employment+Size+Class+for+the+U.S.,+States,+and+Selected+Geographies:+2020

significant burden on contractors. Government projects rarely provide any deposit to initiate services and largely do not release funds for long lead time material procurement, leaving the onus on the Prime Contractor to manage these expenses. This financial strain often leads to cashflow crises for both small and large companies. Compounding the issue, the short timeframe for bid proposal compilation leaves minimal room for cashflow management considerations. Prime contractors are compelled to secure lines of credit or alternative financing at unforeseen interest rates, exacerbating the financial pressure. Even after successful project initiation, the invoice review process and subsequent payment delays extend the waiting period for contractors, who may find themselves receiving compensation two to three months after the installation of work on a construction project. Addressing these challenges is crucial to ensuring the sustainability and success of construction projects in the public sector.
Often, to keep the project moving, small businesses self-finance government projects and work that needs to be done to complete the project, to avoid unnecessary Miller Act or payment bond claims filed by subcontractors and suppliers. It should come as no surprise that this adversely impacts our overall bonding capacity, which is necessary to pursue additional work and bid on other federal projects. Thus, begins a common sequence of events where untimely processing and payment of invoices on one project, prevents a small business from competing for additional federal projects. My company has been unable to bid on many projects, public or private, because our equity was tied up while waiting on invoices to be processed and paid. The result is a decrease in competition for federal projects, an inefficient use of taxpayers' dollars, and fewer opportunities for small business. Additionally, these barriers prevent prospective construction companies from wanting to enter the federal market.

Contractors, especially small businesses like mine, can only self-finance these projects for so long. Slow payment impacts not only the prime awardee, but all lower-tier subcontractors. As Prime Contractors we often times put the burden on the second and third tier Subcontractors to self-finance their work. This puts tremendous burden and strain on a wider magnitude of small businesses who are not set up for this type of work. Often times the material supplier which they are procuring materials from have zero tolerance for any delayed invoices, and we are seeing material suppliers now more than ever require payment in full prior to material leaving factories. On one project for example, Lipsky Construction had the obligation to finance one million dollars in custom aluminum window systems to a manufacturer who required the majority of the payment prior to it leaving the factory for delivery.

III. Supply Chain Disruption Continues

Businesses are still feeling the impacts from supply chain disruptions, including volatile pricing and long lead times for materials. The federal government's procurement process is often longer than the private sector. While we must ensure that federal taxpayer dollars are being spent wisely. The delay between when companies bid on federal work and the when the contract is actually awarded may be several months or more. During that time lag, point prices may change or materials become unavailable or face longer lead times to procure.

Given the fact that firm-fixed price contracts are the most common in federal construction, meaning that contractors are on the hook if the cost of materials increase or if the material procurement becomes longer than reasonably expected at the time of the bid. If a federal owner or contract specifications are inflexible, a project completion date can be significantly extended resulting in great

costs to businesses like mine. These supply chain issues and disruptions are shared both by small and large businesses. Using the same aluminum window example stated earlier, it did not come to Lipsky Construction's attention until after the project was awarded that the availability of raw aluminum was unstable and had tripled in procurement durations, resulting in unforeseen project delays.

IV. Burdensome and Vague Regulations Hurts Small Businesses

Transparency and clear requirements are important to providing for free and open competition to our nation's businesses and accountability to the American people. However, unpredictability and onerous reporting requirements undermine infrastructure investments and will preclude small businesses from benefiting. Construction has long been a well-regulated industry, ensuring that workers are safe, and the environment is protected. Construction projects typically involve large numbers of workers, heavy equipment, procurement of supplies, strict schedules, and many other factors that require the construction industry needing more predictability than many other industries. U.S. taxpayers deserve to know that their tax dollars are spent wisely and for their intended purposes. Reporting requirements are important to meeting that need but must be balanced with meeting the need for swiftly completing projects and fulfilling the missions of federal agencies.

President Joe Biden issued 131 executive orders between 2021 and 2024..[2] Federal agencies collectively finalized 236 rules in 2023 alone. The net regulatory cost of these rules is a $129.2 billion, eclipsing 2022 that was the fifth-most expensive year since 2005.[3] Since the COVID-19 pandemic, businesses of all types—especially small businesses—are confronted with uncertainty on many different fronts. These businesses should not be burden or distracted with new and onerous regulations. The sheer quantity of ever-changing requirements and new regulations hurts small businesses and is a barrier to participation in the federal market. The regulatory environment, while aiming to ensure ethical business practices and protect various stakeholders, imposes a significant burden on small businesses. The government's preoccupation with extensive regulation oversight has raised concerns about finding a delicate balance between fiduciary responsibility and avoiding excessive bureaucratic intervention. This issue becomes particularly pronounced for small businesses with fewer than 15 employees, where the strain is higher. As the owner of such a business, I frequently navigate the challenges by deploying my support staff in diverse roles, exemplifying the adaptability required to cope with the regulatory demands. One day, my secretary may be handling front office reception, and the next, she is engaged in tasks like Minority or Women-owned Businesses Enterprise Utilization plans or Section 8 Labor outreach. This creative workaround is necessitated by the fact that, unlike larger construction companies with a constant supply of new work and the ability to hire dedicated support staff for specific roles, I must find resourceful solutions to meet regulatory requirements and maintain economic viability in the face of limited resources and fluctuating workloads. The perpetual juggling act underscores the need for a nuanced approach that considers both oversight objectives and the unique challenges faced by small enterprises.

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[2] Federal Register. *Executive Orders* (2024). Available at: https://www.federalregister.gov/presidential-documents/executive-orders

[3] Goldbeck, Dan. American Action Forum: *2023: The Year in Regulations.* (2024). Available at: https://www.americanactionforum.org/insight/2023-the-year-in-regulation/#ixzz8R8nquap2

a. Government-Mandated Project Labor Agreements

On January 2024, the Federal Acquisition Regulation Council issued a final rule implementing President Biden's regulation which now mandates federal agencies to require project labor agreements (PLAs) on federal construction projects valued at $35 million or more. AGC neither supports nor opposes contractors' voluntary use of PLAs, but is opposed to any government mandate for contractors' use of PLAs. AGC strongly supports free and open competition for publicly funded work, and believes that the lawful labor relations policies and practices of private construction contractors should not be a factor in a government agency's selection process. AGC believes that neither a public project owner nor its representative should compel any firm to change its lawful labor policies or practices to compete for or perform public work, as PLAs effectively do. Government mandates for PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes, and disrupt local collective bargaining. If a PLA would benefit the construction of a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact, and they would be the most qualified to negotiate such an agreement.

According to an AGC analysis[4] of data—obtained via a Construction Advocacy Fund-financed lawsuit under the Freedom of Information Act—the Department of Defense federal construction agencies declined to impose a PLA mandate 99.4%[5] of the time even when encouraged to do so under the Obama-Biden Administration. According to data collected by the Office of Management and Budget (OMB), between the years of 2009 to 2021, there were a total of approximately 2,000 eligible contracts and the requirement for a PLA was used 12 times. Based on the information, on average there are approximately 167 eligible awards annually and approximately one award that includes the PLA requirement."[6] AGC's analysis of DoD decisions is consistent with the PLA Rule's analysis of government data, showing government-mandated PLAs do not advance economy and efficiency in the procurement of federal construction. Nevertheless, PLAs are now mandated on many federal construction projects. The requirement to work exclusively with unionized subcontractors limits the competitive landscape, leading to potentially increased prices. Additionally, the mandatory use of a unionized workforce may exclude open-shop contractors, limiting options for project owners. The intricate regulations and data recording associated with PLAs can necessitate the creation of full-time positions within construction projects, adding an administrative burden. For smaller companies like Lipsky Construction, the complexities of PLAs deter us from bidding on such projects, as we lack the resources to navigate the associated challenges effectively.

b. Greenhouse Gas Emissions Reporting Requirements

The construction industry is the project delivery system for building a safer, healthier, and environmentally sustainable future. Our nation cannot simply wish for a greener future; it

[4] Associated General Contractors of America (February 9, 2022). *New Data Weighs on Debate Over Project Labor Agreements.* Retrieved from: www.agc.org/sites/default/files/Files/communications/New_Data_Weighs_on_Debate_Over_Project_Labor_Agreements.pdf

[5] *Id.* at 3.

[6] 87 FR 51046

must build it. Likewise, the construction industry must be an integral part of the policymaking processes to help ensure that construction firms and the construction workforce can continue to grow and prosper. Broadly summarized, the Proposed Greenhouse Gass (GHG) Rule introduces two new categories for federal contractors, "significant contractors" and "major contractors."[7] Significant contractors, $7.5 to $50 million in federal contract obligations—not revenue—in the prior fiscal year to inventory greenhouse gases will be required to report Scope 1 and 2 emissions[8] and complete an annual GHG emissions inventory on a public website, www.SAM.gov.

As stated in our comment letter[9] to regulators, AGC is concerned about the establishment of technically unfeasible measures to address climate change that construction firms of all sizes, especially small businesses, cannot meet. Such measures threaten construction firms' ability to compete in the federal construction marketplace and build the infrastructure. Concerningly, the proposed GHG federal regulation will present a significant cost to small businesses in perpetuity. Regulators estimate the cost to small businesses to be $103,054,261 in the initial year of implementation and $62,514,193 in subsequent years.[10]

According to a survey AGC conducted on sustainability practices, almost 80 percent of respondents have policies in place to encourage recycling.[11] More recently, environmental, social and governance (ESG) considerations are being looked at by construction industry stakeholders—lenders/investors, insurers, public- and private-sector developers of real-estate/infrastructure/industrial projects as well as their customers and clients. AGC expects the demand for, and company disclosure of, information about climate change risks, impacts, and opportunities to continue to grow—even without the GHG reporting requirements.[12]

c. Revised Davis-Bacon and Related Acts

The application of the Davis-Bacon and Related Acts to federal and federally assisted construction projects leave many contractors uncertain about the requirements of federal prevailing wage laws and the consequences of non-compliance. The recent changes to the regulations add to this uncertainty. Failure to comply will place covered contractors at risk of catastrophic consequences, from losing money on contracts due to failure to understand

[7] 87 FR 68313

[8] Per OMB Memo M-22-06 and as currently defined at FAR 23.001.

[9] Associated General Contractors of America, Comment Letter on Proposed Rule to Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (Feb. 13, 2023), https://www.agc.org/sites/default/files/Files/Govt%20Regulations%20and%20Executive%20Orders/AGC%20of%20America%20Comments%20on%20FAR%20Case%202021-0015.pdf

[10] 87 Fed. Reg. 68324

[11] Associated General Contractors of America, Recycling Policies Are Widespread and Other Survey Findings (Jun. 13, 2023). Available at: https://agc.org/news/2022/06/29/recycling-policies-are-widespread-and-other-survey-findings

[12] AGC construction firms are being asked how they are preparing for the impact of climate change on their business (including the impact of extreme weather changes, markets, access to human and material resources, and possible government regulations); the level of greenhouse gas emissions related to their direct, indirect, and third-party supply-chain operations; and the associated costs of climate change initiatives. Developing methods to estimate the impact of climate change on construction businesses is significantly challenging, particularly with a highly complex, fragmented, and project-based construction process. Some companies are reporting data on their public filings and annual reports, others are voluntarily publishing sustainability reports accessible to their clients and the public and/or voluntarily complying with third-party standards.

labor costs, to high dollar back pay and related penalties, to debarment from future federal work.

For example, the U.S. Department of Labor codifies its current guidance that truck drivers employed by contractors or subcontractors must be paid applicable prevailing wage rates for all onsite driving time unrelated to offsite delivery (e.g., hauling materials from one location on the site of the work to another), for any time spent transporting "significant portions" of public works from secondary construction sites, for any time spent transporting materials to or from adjacent or virtually adjacent dedicated support sites, as well as for any onsite time related to offsite delivery if such time is not de minimis. The final rule clarifies that where workers spend a significant portion of their day or week onsite, short periods of time that in isolation might be considered de minimis may be added together. The total amount of time a driver spends on the site of the work during a typical day or workweek—not just the amount of time that each delivery takes—is relevant to a determination of whether the onsite time is de minimis. The effectiveness of Davis-Bacon and Related Acts becomes evident when regulations and policies are clear and well-defined, providing a solid foundation for implementation. However, vague regulations introduce undue risks and costs to projects, allowing for subjective interpretations. The recent changes to Davis-Bacon and Related Acts, particularly concerning truck drivers, raise substantial concerns, leaving many areas in a gray and subjective state for regulators. To address these issues, a reevaluation of the policy is essential, with input from AGC representatives for example who can contribute to refining and implementing ideas that are feasible for all parties involved.

V. Workforce

The construction industry's labor shortages remain severe with most construction firms expecting labor conditions to remain tight. Despite firms increasing pay and benefits, the workforce shortage continues. A 2023 AGC survey[13] found 93% of construction firms report they have open positions they are trying to fill. Among those firms, 90% are having trouble filling at least some of those positions – particularly among the craft workforce that performs the bulk of onsite construction work. While finding qualified workers remains a challenge, the survey does show that contractors are optimistic, particularly with road, bridge, and transportation construction.

The industry is facing the effects of decades of policies directing students to attend four-year institutions as the only career option. For every dollar the federal government invests in career or workforce education, it spends five encouraging students to go to a traditional four-year college and pursue a "professional" career.[14] That is why AGC supports increased funding for Career and Technical Education (CTE) funding, as laid out in the Carl D. Perkins Vocational and Technical Education (Perkins) Act. Perkins is the primary federal program for developing and supporting CTE programs for secondary and post-secondary students. Exposing younger individuals to construction skills and careers is critical. However, these programs, especially construction focused ones, are expensive to operate and administer for local schools, as they involve purchasing construction

[13] Associated General Contractors. *AGC & Autodesk Workforce Survey* (2023). Available at: https://www.agc.org/news/2023/09/06/new-survey-shows-significant-flaws-nations-approach-preparing-workers-construction-careers-and-how

[14] Opportunity America. Available at: https://opportunityamericaonline.org/

equipment, simulators, and tools as well as attracting and retaining instructors. And these programs face rising inflationary pressure and lingering pandemic impacts.

Just as the construction industry is experiencing workforce shortages, federal agencies are experiencing the same struggles. Without adequate federal agency staffing, the risks of delayed responses and project awards increase to small businesses. This Congress should continue to provide agencies with flexibility and direct hire authority. A good example can be found in the U.S. Army Corps of Engineers. This agency has initiated a "Talent Acquisition Center of Excellence" which creates an automated recruitment platform for investing inhuman capital. In addition, the Army Corps of Engineers uses "Direct Hire Authority" to be flexible in hiring new talent. These are just some of the ways in which federal agencies, with Congressional approval, can help address its workforce challenges.

As a Building Board Member of the New York State Associated General Contractors of New York State, we annually orchestrate a round table discussion involving New York State agencies to delve into the current status of New York State. Over the past three years, a recurring and pressing concern has emerged from every major New York State Construction Agency—talent acquisition within their ranks is proving to be a formidable challenge. These agencies find themselves locked in fierce competition with the private sector for skilled construction professionals, all vying for a finite pool of available talent. The escalating struggle for recruitment within state agencies has become a focal point, emphasizing the urgency of addressing this issue to sustain and enhance the efficiency of construction projects across the state. It can only be assumed that the federal agencies share this same frustration and are competing for the same pool of limited resources as the state agencies as well as the private sector.

VI. Conclusion

Thank you again for inviting AGC to testify before the subcommittee today. I look forward to answering any questions you may have.

Good morning Chairman LaLota, Ranking Member Scholten, and distinguished Members of this Committee. Thank you for the opportunity for me to be here today. It is my honor to provide my testimony to this committee about ways that our small business can work with the federal government with greater efficiency and effectiveness.

My name is Bob Taylor, and I am testifying on behalf of my three Grand Rapids, Michigan-based companies and the 71 people I employ. I am the 100% owner of Alliant Healthcare Products, a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) which sells healthcare products to the VA and US Military Hospitals throughout the world, its sister company Medisurge, a contract medical device manufacturer, and Alliant Biotech, an orthopedic company focused on knee implants.

Background

I had a 17-year military career leading to the rank of Major, I served my first six years in the Air Force on active duty as a B-52 navigator and radar navigator.

As a First Lieutenant, I flew eleven combat missions in the First Gulf War. I wrote a book which was published earlier this year called, "From Service to Success" The book reflects on my combat experience, the challenges I've faced since then, and provides a roadmap of how veterans can overcome those challenges and not only survive, but to find their greatest success in life.

Since starting Alliant Healthcare Products almost 22 years ago, we've become experts at navigating the complexities of the federal market. We have earned a strong reputation as an exceptional federal market expert who provides value throughout the supply chain. Small businesses are vital to this space. If we learned anything from our experience with Covid is that our supply chain is fragile, and it is imperative to our national security and the welfare of our citizens that we maintain a vibrant and diversified supply base with a strong focus on small businesses.

Our small business has streamlined the process for helping the VA and military hospitals in acquiring over 200,000 different healthcare products from over 40

different manufacturers. In addition, our most important benefit to the government is that we do not mark up prices for approximately 90% of the products we provide. We allow the contracting officer to negotiate fair and reasonable pricing as though they are buying directly from the manufacturer themselves, and then we honor those prices.

In the words of one contracting officer:

> *"We love working with Alliant because you offer the same exact pricing and your team understands the government procurement process better than the manufacturers" -unquote*

Challenges?

My understanding is that this committee wants to know why small businesses are exiting the government space. I think I can provide some insight.

Our major challenge in dealing with the federal government is the time and data required prior to obtaining necessary contracts to meet the government's needs. The impact is significant. It costs our company in lost revenue and profits, but it also delays lifesaving and/or life-improving healthcare for our nation's warfighters and veterans. The delays are not measured in weeks and months, but in years.

As examples, our products need to be on multiple different contracting tools like the Federal Supply Schedule, ECAT, IDIQs, DAPA, MSPV, and HTME and others. All require hundreds of thousands of transactional data, and most do not require the same data. Also, If one contracting officer determines a price to be fair and reasonable, the others do not recognize that determination. Each submission takes anywhere from 12 to 18 months or longer. The process of their analysis takes so much time that the data must be resubmitted, which causes more delays. These requirements are daunting.

Other challenges include government payments. Alliant currently has $7.4 million in receivables from the federal government. Of that, approximately $4.2 million is past due. The government is not paying in a timely manner. What's interesting is

that Congress passed laws to ensure timely payments to small businesses as described in FAR Part 32.009, but the agencies are not adhering to that law.

Congress also passed laws to require prime contractors to sub-contract with SDVOSBs but are allowed to achieve subcontracting goals that are far below requirements. For example, the law requires 3% subcontracting, but the actual numbers are an order of magnitude below that stated requirement.

Conclusion:

Alliant offers the military and VA hospitals the ability to acquire healthcare products in a streamlined and efficient manner. We could do more and drive greater efficiency, but we need to work together to solve these challenges. The government needs to realign its contracting tools to consolidate the required data for awarding contracts. The agencies also need to follow the laws that are already in place.

This concludes my testimony. Thank you all very much.

End of oral testimony

Attachment

Suggested Improvements

1. Pre-Award Audits should require a sampling of data rather than a 100% review of data. If the government chooses to do a more thorough audit, it can be conducted post-award and pricing adjustments made as data dictates.
2. Once an item is determined to be offered at a fair and reasonable price, then the other contracting officers should be able to use that determination to award a contract on their contract regardless of agency.
3. Various contracting tools should consolidate requirements so that contractors have a more consistent requirement across multiple contracts and multiple agencies.
4. The definition and determination of "fair and reasonable price" needs to be defined consistently across all contracts.
5. The data requirements to determine fair and reasonable price is too onerous and is an outdated method for determining a suitable price for selling to the government. The process requires a much more streamlined process.
6. Third parties could be utilized to conduct pre-award audits. Perhaps industry could pay for these services if it resulted in receiving contracts faster. This system has been used by the FDA for some product submissions.
7. Contracts need to be "open" more frequently to allow new businesses and new technology an opportunity to reach the intended market. Some contracts are closed for five years and some only allow modifications once per year.
8. Each contracting officer needs to have a deadline to either award or decline a contractor's submission. The agencies cannot require more data than they can in-turn process.
9. Whether a contractor offers 10 items or 200,000 items they have only one contracting officer to evaluate the offer. Resources need to be applied based on the size and scale of the offer to meet deadlines.



February 15, 2024

The Honorable Nick LaLota
Chair
House Committee on Small Business
Subcommittee on Contracting and
Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Hillary Scholten
Ranking Member
House Committee on Small Business
Subcommittee on Contracting and
Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman LaLota, Ranking Member Scholten and Members of the Committee on Small Business Subcommittee on Contracting and Infrastructure:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 23,000 members, I appreciate the opportunity to comment on today's hearing, "Leveling the Playing Field: Challenges Facing Small Business Contracting." The majority of ABC's general contractor and subcontractor members qualify as small businesses as defined by the Small Business Administration. The industry consistently has one of the highest concentrations of small business participation and its members play an integral role in building America's infrastructure.

The National Federation of Independent Business' recent study showed that owners who expect higher real sales volumes fell 12% last month, the most since mid-2022. In addition, a larger share of small business owners reported lower earnings over the last three months. ABC's Construction Backlog Indicator, the only economic indicator that reflects the amount of work that will be performed by commercial and industrial construction contractors in the months ahead, declined to 8.4 months in January, according to an ABC member survey conducted from Jan. 22 to Feb. 4. Despite these statistics, the Biden administration continues to prevent small businesses from competing for federal construction projects through discriminatory policies.

The Federal Acquisition Regulatory Council's final rule, Use of Project Labor Agreements for Federal Construction Projects, took effect on Jan. 22, implementing President Joe Biden's Executive Order 14063, which requires federal construction contracts of $35 million or more to be subjected to controversial PLAs. The final rule will needlessly increase construction costs and reduce opportunities for local contractors and skilled tradespeople. Government-mandated PLAs increase the cost of construction by 12% to 20% and reduce competition from 89.3% of the construction industry workforce. Of interest to the subcommittee, the final rule will discriminate against the majority of our nation's small, women-, veteran- and minority-owned businesses, which deserve a fair opportunity to help rebuild their communities.

In addition, the U.S. Department of Labor's Wage and Hour Division announced the final rule on Employee or Independent Contractor Classification Under the Fair Labor Standards Act, which rescinds the ABC-supported 2021 final rule and replaces it with a confusing multifactor analysis to determine whether a worker is an employee or an independent contractor. The final rule takes effect on March 11, 2024. Independent contractors play an important role for large and small contractors, delivering construction projects safely, on time and on budget for their government and private customers. This move will jeopardize the ability of construction firms to continue the industry's longstanding practice of utilizing legitimate independent contractors, many of which are small businesses.

ABC recently estimated that the construction industry will need to attract 501,000 additional workers on top of the normal pace of hiring in 2024 to meet the demand for labor. Discouraging America's small

businesses from competing will only further exacerbate the construction industry's skilled workforce shortage.

ABC appreciates the opportunity to comment on the subcommittee's work to level the playing field for small business contracting.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs

February 20, 2024

National Aeronautics and Space Administration (NASA)
Solutions for Enterprise-Wide Procurements (SEWP) VI GWAC Program Office
Mary W. Jackson NASA Headquarters
Washington, DC 20546-0001

Dear SEWP VI Contracting Team:

The Information Technology industry is excited to participate in the upcoming SEWP VI competition and respectfully provides this letter in response to your Request for Information released on September 18, 2023. We look forward to continuing the relationships with NASA and its customers. SEWP V is arguably the most successful IT-focused GWAC ever awarded in the Federal Government in terms of meeting the Government's procurement requirements and satisfying its procurement policy goals. We are fully supportive of working with you to ensure that the new SEWP VI program will continue to satisfy the same requirements and goals and continue as the premier opportunity for the small businesses that have developed by supporting the opportunities provided by SEWP V. To that end, we are pleased to have the opportunity to provide this industry perspective to assist you in the important work of crafting another best-in-class acquisition vehicle with SEWP VI.

I. Introduction -- Maximize Competition and Minimize Complexity

Industry best supports Government in obtaining the best products and prices when the procurement strategy starts with two important elements: the desire to facilitate maximum competition and minimize complexity, or "red tape." The more companies compete, the more they will provide the lowest prices and best possible value. Likewise, when complexity and administrative hurdles are understood and minimized, contracting professionals can efficiently obtain the products and services their customer organizations require.

When competition and complexity are properly managed, a GWAC can become the "go-to" contract for agencies across the Government. SEWP V, with a robust contractor base of over 100 prime contract holders and a streamlined solicitation process, became just such a "go-to" vehicle. Now, on the threshold of SEWP VI, we strongly urge you to take stock of the successes of SEWP V and take care and be mindful of the risks of actions that might "fix what is not broken." We respectfully urge caution so that any considered changes to SEWP VI are weighed in a manner so as to not place significant administrative hurdles upon the Government and the contract holders, or inadvertently limit the field of competition to only a few prime contract holders. Continued focus upon maximizing competition and minimizing complexity will enable SEWP VI to continue as one of the Government's most effective acquisition tools.

II. The Success of SEWP V

There are significant lessons that can be learned from SEWP V's success. Keeping with the theme that we should be careful to not try to fix things that are not broken, in planning for SEWP VI, due consideration should be given to protecting and carrying forward the elements of SEWP V that have served the Government's purposes so well.

A. The Current SEWP V Contractor Ecosystem

SEWP V has developed over 100 prime contract holders. This well-developed ecosystem of industry participation ensures agency customers have access to the best cutting edge products, solutions, and capabilities to support the Government customers. Likewise, the large number of contract holders facilitates the robust competition so necessary for market driven competitive pricing. This level of participation and competition also ensures that contract holders work hard to be efficient and keep overhead and margins as low as practical to maximize the benefit to the Government and win deals.

Another successful element of the SEWP V ecosystem is its long list of small business contract holders. Approximately 88% of all SEWP V sales are currently being conducted under some form of small business set-aside. It is clear that many agencies use SEWP V as a vital component of their strategy to meet the mandatory small business contracting goals imposed by Congress. These sales are overwhelmingly conducted through resellers that provide single-point access to vast product catalogs and "value added" services like installation and configuration. The current primary NAICS for SEWP V is the Information Technology Value-Added Reseller ("ITVAR") exception to NAICS 541519. This exception is a primarily product-based code, requiring that at least 50% of the contract is expected to consist of products. After 8 years of performance, the majority of the sales on SEWP V consist of hardware and software products.

B. The Role of Qualified and Experienced Resellers

Qualified and experienced resellers are the key to procuring the most advanced products at the best prices. Successful resellers are required to establish and maintain relationships with hundreds or thousands of suppliers. In many instances, an effective reseller is required to invest in training and certifications for the complex information technology products they sell to the Government. When these relationships mature, resellers can reach advanced achievement levels (either by expertise and certification levels and/or meeting sales goals) that earn them additional discounts, access to advanced products, and other benefits that ultimately provides a benefit to the Government. The benefits these qualified and experienced resellers bring to the Government can be in the form of better pricing through more favorable discounts from their suppliers, as well as more knowledgeable support to the Government and its community of support contractors. By contrast, inexperienced resellers do not have well-established relationships and cannot offer such discounts and expert knowledge regarding the diverse products sought by the Government. Companies focused on solely providing IT services do not have established robust supplier networks and are not adequate substitutes for established resellers who help bridge the gap between commercial original equipment manufacturers and the Government's network of support contractors.

C. Employee Based Size Standards Versus Revenue Based Size Standards

Because of the large volume, but lower margin business done by resellers, it is critical that small business resellers be evaluated against SBA's employee-based size standards, and not revenue-based codes. Established resellers can quickly accumulate millions of dollars in "gross" revenue, and many exceed $40-50M in just a few years of operation. However, despite the high gross revenue, resellers operating in this very competitive market typically operate on less than 5% margin – leaving them able to field only relatively modest workforces. Resellers can reasonably reach $50M in gross revenue, with most of the revenue passing through their hands to the original equipment manufacturers. Despite these thin margins, the gross revenue figures quickly places these resellers out of reach of any revenue-based small business NAICS codes such as 541512 (with a $34M size cap), while being well below the employee-based limits. The revenue-based codes therefore eliminate most resellers from small business participation.

D. Avoiding Regulatory "Red Tape"; The Nonmanufacturer Rule and Commercial Information Technology

To ensure the appropriated funds placed on set-aside contracts inure to the exclusive benefit of small business manufacturers, in 2016 Congress updated the Nonmanufacturer Rule (or "NMR," found at 13 CFR §125.6). This rule requires small business resellers to provide small business-made products on set-aside task orders over the Simplified Acquisition Threshold ($250,000) and all orders set aside for socioeconomic small businesses (8(a), HUBZone, WOSB, SDVOSB, etc.).

This rule works well for standard manufactured goods, but generates significant regulatory problems when applied to the unique IT industry, and the nature of the companies that manufacture IT equipment. For many goods (e.g. office furniture, notebooks, or building signage) the Government can obtain what it needs from any small business that can produce compliant products. In the IT market however, the products are extremely complex and introduce compatibility problems, cybersecurity risks, and varying levels of suitability to address the Government's requirements. For example, a Government Agency may require a PDF reader compatible with its network, that meets stringent cybersecurity requirements, and is usable by the average agency employee. There may be only one such program (Adobe Pro) available. Because Adobe is not a small business, the NMR would prohibit Agencies from setting aside any task order calling for the acquisition of Adobe products.

The NMR can be waived under two circumstances. First, when no small businesses manufacture the needed product at the necessary scale, the SBA can grant a "Class Waiver" of the portion of the NMR that requires small business-made products, but only for that class or description of products. Second, if small businesses do manufacture similar products, but the specific type of product required is only manufactured by large businesses, the agency's contracting officer can request an "Individual Waiver" of the NMR with respect to that acquisition itself. If such a waiver is granted, small business awardees can provide the required products on set-aside contracts.

SEWP V was successful in part because it avoided the regulatory hurdle of the NMR. SEWP V was awarded in 2015 before the NMR became applicable to NAICS 541519, and thus the rule was fortuitously inapplicable to SEWP V. Had this rule applied to task orders on SEWP V, the majority of the products purchased by SEWP V customers without an appropriate waiver could not have been legally sold. Because most products needed by the Federal Government are made by large businesses (Microsoft, Adobe, Cisco, Dell, Solarwinds, HP, etc.), this rule would have eviscerated SEWP V's effectiveness as a small-business-capable GWAC.

SEWP V is successful in part because it has a large number of well-established small business resellers, not hamstrung by the NMR, that bring high-discount relationships to bear while maintaining their usefulness as small businesses to the customers who need such credit. The use of NAICS 541519 ITVAR, with a size standard of 150 employees, allowed resellers to win small business awards unavailable under revenue-based codes. It is imperative that this issue be addressed in the planning and execution of SEWP VI for this vehicle to continue to meet the Government's objectives of supporting this small business ecosystem while meeting the Government's vital procurement needs.

III. Challenges to Continued Success Under SEWP VI

A. The Current SEWP VI Contractor Base Problem

As noted above, in planning the strategy for SEWP VI, care should be given to ensure that we do not inadvertently try to fix something that is not broken. Although SEWP V succeeded on the strength of its experienced small business resellers, SEWP VI is currently structured in a way that could decimate the current SEWP V small business ecosystem by preventing these resellers from meaningfully participating on SEWP VI. All the strengths of SEWP V discussed above will be unavailable to SEWP VI.

As noted above, any GWAC hoping to offer its customers the ability to log small business credit with great product diversity at low prices must have experienced resellers. As currently architected based upon the most recent information, SEWP VI's use of NAICS 541512 will directly prevent SEWP V's small business reseller base from competing as small businesses on the new contract by imposing a revenue-based small business standard that experienced resellers cannot meet. Resellers generate high revenue at low margins – meaning they quickly exceed the $34 million revenue-based size standard applicable to 541512. Where SEWP V relies upon qualified and experienced small business resellers that have invested in cultivating and maintaining excellent supplier relationships and discounts, SEWP VI will be forced to rely on service-focused small businesses that lack such relationships. This means potential destruction of the current SEWP V ecosystem, higher prices to the Government, limited access to more advanced product lines, and a generally a less effective GWAC.

While SEWP VI will award a contract to all "qualified offerors," it is likely that most small businesses awardees will be service providers under 541512 and not experienced resellers. Ignoring the differences between small service providers and small experienced resellers could have grave consequences for the SEWP VI program. Customers will have to choose between small business credit available from the inexperienced service-focused contract holders or the

lower prices and greater product availability offered by the experienced resellers who did not receive small business SEWP VI contracts. On SEWP V, there was no such dilemma – but under the current SEWP VI structure, customers will not be able to get both.

B. Acknowledge the Distinction Between Service Providers and Reseller's to Maintain SEWP VI As the Premier Government Procurement Vehicle

Given the potential significant consequences of ignoring the distinction between service providers and resellers, steps should be taken to ensure that SEWP VI maintains its place as the premier procurement vehicle relied upon by Government. This problem can be overcome by ensuring that resellers, relegated to large-business status on the base contract by the use of NAICS 541512, can nevertheless compete as small businesses under the employee-based size standards applicable to manufacturing codes (e.g. 334111 with a size standard of 1,250 employees). While it appears this is the intent behind including the in-scope NAICS codes listed in the draft, this question cries out for simplicity and clarity. We respectfully request confirmation that such a plan will be included in SEWP VI.

GSA's OASIS+ procurement is a recent example of how to address this issue. Like SEWP VI, OASIS+ includes multiple categories (or "domains") under which ordering contracting officers can select from many different NAICS codes when placing orders. Nonetheless, GSA assigned a single NAICS code at the master contract level "for administrative purposes only." This was done "[d]ue to a limitation with the Federal Procurement Data System (FPDS)," in which "only a single NAICS code may be assigned to a contract and subsequently reported with each contract action (i.e., task order)." GSA made clear in the solicitation, however, that contract holders will be able to compete for any task orders for which they qualify as a small business under the NAICS code assigned to the order:

> [A]ssignment of a Primary NAICS Code does not limit Contractors' eligibility to respond to task order solicitations or perform work outside of the NAICS assigned as their Primary NAICS on their contract. Contractors will be eligible to compete within all awarded Domain CLINs (NAICS Codes), which represent the Contractor's specific fair opportunity pools.

OASIS+ Final Solicitation at 22. SEWP VI should insert similar language into the final solicitation to clarify the rules for all offerors and ordering contracting officers.

Additionally, we request clarification on the way customers will select NAICS codes at the task order level. As discussed above, the experienced resellers that made SEWP V so successful can only compete as small businesses if customers properly classify their purchases into NAICS codes with employee-based small business standards such as NAICS 334111. Because SEWP VI includes a list of "in-scope" NAICS codes that may be used at the order level, we request a the SEWP VI program office establish a method for assisting customer Contracting Officers in establishing the correct NAICS code.

The list of in-scope NAICS codes for Category A opens the possibility for errant NAICS determinations by customer contracting personnel, and we request SEWP VI provide an internal review process by which contract holders can challenge NAICS code determinations. For

example, if a customer improperly classifies a hardware procurement as a set-aside order under a services code (541512, for example), resellers will again be unfairly unable to participate. The FAR provides a method for protesting a Contracting Officer's NAICS determination (FAR 19.103), but until October 1, 2025, FAR 19.102(b)(1) requires all task orders to be solicited under the base contract NAICS. Thus, it is not clear that NAICS protests would be possible under that authority for SEWP VI. We strongly recommend SEWP VI include a method by which NAICS code determinations can be challenged.

By ensuring existing resellers can still compete on task orders as small businesses under employee-based NAICS codes, SEWP VI can preserve and protect the reseller contractor ecosystem that is a hallmark of SEWP V's success.

C. Minimize Complexity By Obtaining A Contract-Wide Waiver of the Nonmanufacturer Rule

As stated above, minimizing regulatory hurdles is key to the success of a GWAC. One of the biggest obstacles to IT-focused GWAC efficiency is the Nonmanufacturer Rule discussed above. It is important to note the NMR does not/cannot apply to NAICS 541512, the code chosen for SEWP VI's base contract. However, it will apply to any subsequent task orders solicited under the designated in-scope manufacturing NAICS codes (e.g. 334111, 334210, etc.). This will prevent customers from buying the large-business IT products they need on small business set-aside orders over $250,000, or on any socio-economic set-aside orders using the manufacturing NAICS codes.

Only individual Contracting Officers can request Individual NMR waivers - but the overwhelming experience within industry is that Contracting Officers generally do not seek or obtain individual waivers to the NMR as required by the SBA. These waivers require a determination by the Contracting Officer that the customer requires a specific product that is only manufactured by a large business. To avoid the administrative delay of requesting such a waiver, Contracting Officers regularly place the risk of non-compliance on the contractors by not obtaining the wavier while still requiring large-business products on set-aside task orders. The Government Accountability Office (GAO) made this clear in its December 14, 2023 report showing contracting officers submitted only 670 NMR waiver requests during FY2017-2022 – far short of the number expected considering the Government issued approximately 102,000 set-aside contracts during that period. Alternately, Contracting Officers will occasionally remove the set-aside altogether and solicit the opportunity as a full-and-open opportunity rather than seek the waiver, preventing small businesses from being able to compete.

To avoid this issue, SEWP VI should coordinate a contract-wide Individual NMR wavier from the SBA. Recently, a number of large IT-focused GWACs have done so, creating precedent and a new "best practice" for similar contracts. Specifically, the SBA has granted NMR waivers based on specific catalog requirements for both the Army (on the ITES-4H contract) and the Department of Homeland Security (DHS, on the FirstSource III contract), both of which are in the proposal evaluation stage. The SBA recognized – as we do – that the Government needs the well-vetted products provided by large businesses, and can rarely employ small-business

products due to security concerns or limitations in production capacity. The customers who use these contracts will benefit greatly from the increased efficiency afforded by these waivers.

If the NMR remains applicable to the task orders on SEWP VI, it will result in a stifling of customer desire to use it as the vehicle of choice for IT procurement. Because ITES-4H and FirstSource III will not have the additional red tape that comes with obtaining individual NMR waivers for each order, agencies will likely prefer those vehicles over SEWP VI. Additionally, because contracting officers rarely seek individual NMR waivers at the order level, leaving this rule applicable to orders will place contractors at great risk – leaving them to choose between violating the NMR by providing quotes, or abstaining from bidding altogether. Neither scenario will contribute to SEWP VI's success. Thus, to maximize its usefulness as a contract vehicle, SEWP VI needs to coordinate a contract-wide NMR waiver from the SBA.

IV. Recommendations

In summary, below are suggestions from high-performing industry partners who have helped make SEWP V the premier federal contacting vehicle.

- Suggestion 1: Take full advantage of small business resellers by allowing them to compete as small businesses.
    - Consider utilizing a NAICS code with an employee-based size standard at the contract level, such as 334111 or 541519 (ITVAR Exception). This will ensure SEWP VI can take advantage of the experience and value of established SEWP V resellers.
    - Alternatively, adopt an approach similar to OASIS+ by using a single NAICS code at the contract level "for administrative purposes only" but make clear in the solicitation that contractors are eligible for all task orders for which they qualify as small under the NAICS code assigned to the order.
    - Promote small business competition on task orders by specifying any other-than-small SEWP VI contract holder can nevertheless compete as small businesses under the in-scope NAICS codes.
    - Consider splitting Category A into its own contract under NAICS 334111, similar to the Army CHESS model, which has separate contracts for products and services. We also recommend deleting all services NAICS codes from Category A as they are already provided for in Categories B and C.
    - Consider including a method for challenging customer NAICS code determinations at the task order level. This will ensure opportunities are channeled towards the contractors best poised to fill those requirements.
    - If this suggestion is followed, the general FAR requirement to consider price may then apply to the SEWP VI source selection decision. If so, we suggest the price evaluation be conducted on a "Go/No Go" basis depending on whether offerors are able to provide a list of products below commercial list price. Any "qualified offeror" with sufficient supplier relationships will be able to meet this requirement.

- Suggestion 2: Follow precedent established by recent Information Technology GWACs and obtain an Individual Waiver of the NMR from the SBA.

    - Without a waiver, NMR will apply to all set-aside task orders over the Simplified Acquisition Threshold ($250,000) or utilizing a socio-economic set-aside (8(a), HUBZone, SDVOSB, or WOSB) if competed under manufacturing NAICS codes (e.g. 334111, 334210, etc.). This will prevent customers from buying the large-business IT products they need on small business set-aside orders.
    - Relying on individual contracting officers to coordinate task order-specific NMR waivers will result in three likely scenarios that will degrade SEWP VI's effectiveness as a small business-capable GWAC:
        - The first and most likely scenario is that the CO will not seek or obtain individual waivers to the NMR and will unfairly place the risk of non-compliance on the small business contractors;
        - The CO will remove the set-aside and solicit the opportunity as a full-and-open opportunity, preventing small businesses from being able to compete; or
        - The CO will choose to place the order on another GWAC for which the NMR has been waived at the contract level (DHS FirstSource III, Army ITES-4H).

V. Conclusion

SEWP V is the most successful information technology GWAC because it maximized task order competition while keeping complexity and regulatory red tape low. During that time, it became a favorite acquisition vehicle for agencies across the Federal Government. But it also became a major artery of support for a robust ecosystem of over one hundred small businesses which collectively represent thousands of employees, each of whom can trace their livelihoods and careers directly to the opportunities provided by the SEWP V program. We respectfully implore you to look for ways to protect the well-developed SEWP V ecosystem and emulate that success with SEWP VI.

Proceeding carefully and thoughtfully here is for the benefit of both individuals and the small businesses they support, as well as the Government customers whose missions rely upon the technology we offer. This letter recommends some ways to continue and build upon the successes of SEWP V, and we would welcome the opportunity to engage in a constructive dialogue to help address the mutually beneficial goals of SEWP VI. We look forward to the chance to discuss these and other issues with you as this program moves forward. Thank you sincerely for your attention to these matters.

Very Respectfully,
The Industry Partners Listed Below

In Alphabetical Order:

CSP Enterprises, LLC
WOMAN-OWNED SMALL BUSINESS (WOSB)
Sheryl Vesper, President/Managing Partner

Cynergy Professional Systems, LLC
SBA CERTIFIED 8(A)
SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS (SDVOSB)
ECONOMICALLY DISADVANTAGED WOMAN-OWNED SMALL BUSINESS (EDWOSB)
Denton Browning, Vice President

DISYS Solutions, Inc. (DSI Tech)
SMALL BUSINESS CONCERN (SBC)
Alan Bechara, Executive Vice President

En-Net Services, LLC
SMALL BUSINESS CONCERN (SBC)
Kyle Yost, Co-Founder and President

FCN Inc.
WOMAN-OWNED SMALL BUSINESS (WOSB)
Rob Brosey, Vice President and Director of Business Development

Federal Resources Corporation
HUBZONE SMALL BUSINESS
Jeremy Young, CEO

GovSmart, Inc.
HUBZONE SMALL BUSINESS
Brent Lillard, Co-Founder and CEO

Regan Technologies
SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS (SDVOSB)
Prince Anand, Executive Vice-President/COO

Sterling Computers Corporation
WOMAN-OWNED SMALL BUSINESS (WOSB)
Jeff Moore, Senior Vice President

ThunderCat Technology, LLC
SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS (SDVOSB)
David Schlosser, COO

WestWind Computer Products, Inc.
HUBZONE SMALL BUSINESS
WOMAN-OWNED SMALL BUSINESS (WOSB)
Lupé Montoya, Vice President of Sales

Industry Representatives Statement

As industry representatives, all entities endorsing this letter wish to convey the following:

1. This letter is provided in response to your Draft Request for Proposals / Request for Information dated September 18, 2023. Our purpose is to provide the SEWP VI program office with useful market intelligence that we believe will contribute to the success of the program and the contractors on which it will rely. We expect and encourage this letter to be provided to all potential offerors or other stakeholders to ensure SEWP VI receives the best information with which to conduct acquisition planning.

2. We believe the information provided in this letter is broadly applicable to the information technology reseller market. It does not represent any attempt to secure individual advantages of any kind beyond those resulting from a more successful and efficient contract vehicle.

3. This is the only and exclusive coordination between the industry representatives endorsing this letter. The endorsing entities have not and will not coordinate with respect to any proposal details whatsoever, including but not limited to bidding strategies, technical or pricing data, or any other proposal details.

PILIERO MAZZA
1001 G Street, Suite 1100
Washington, DC 20001
www.pilieromazza.com

February 7, 2024

VIA EMAIL ONLY

Ms. Joanne Woytek
Program Director
NASA SEWP Program

Re: NAICS Codes and Nonmanufacturer Rule Waiver for SEWP VI

Dear Ms. Woytek:

Our firm represents numerous small businesses that perform on the SEWP V contract as information technology value-added resellers ("ITVARs"). As you may recall, I have met and heard you speak at several industry events over the years. We know you appreciate how important the SEWP V contract has been for many small business ITVARs, and, in turn, how important these small business ITVARs have been to the great success of the SEWP V vehicle.

As NASA is working on the final RFP for SEWP VI ("Final RFP"), we are writing to express concerns from the many small business ITVARs we represent regarding the use of NAICS code 541512 for all three categories in the draft SEWP VI RFP ("Draft RFP"). We understand others have expressed similar concerns to NASA, most notably the House Small Business Committee in a letter it sent last month to NASA Administrator Bill Nelson. To best address these concerns, we have two recommendations for the Final RFP: (1) designate NAICS code 541519, ITVAR exception to Category A; and (2) include all applicable class waivers of the nonmanufacturer rule ("NMR") and pursue an individual waiver of the NMR for common product categories in which there are no small business manufacturers.

1. Designate NAICS code 541519, ITVAR Exception, for Category A

In our view, NAICS code 541512 is not the best fit for each category in the Draft RFP and, therefore, the assignment of NAICS code 541512 to all three categories would not be consistent with applicable U.S. Small Business Administration ("SBA") regulations and case law. Furthermore, assignment of NAICS code 541512 to all three categories for SEWP VI would prevent most small business ITVARs on SEWP V from participating as prime contractors on SEWP VI because such firms have higher annual revenue from reselling IT products and qualify as small businesses under the so-called "ITVAR exception" to NAICS code 541519, which has a size standard of 150 employees. SEWP V utilized the ITVAR exception to NAICS code 541519 and SEWP VI should as well.

According to SBA regulations, the procuring agency contracting officer is supposed to designate the NAICS code "which best describes the principal purpose of the product or service being acquired."[1] For multiple award contracts like SEWP VI, the contracting officer may only assign a single NAICS code if that code "best describes the principal purpose of the acquisition" and "will also best describe the principal purpose of each order to be placed under the Multiple Award Contract."[2] However, when a single NAICS code is not the best fit for the entire acquisition and each order to be placed under the multiple award contract, the contracting officer is required to "[d]ivide the solicitation into discrete categories . . . and assign each discrete category the single NAICS code and corresponding size standard that best describes the principal purpose of the goods or services to be acquired under that category . . . ."[3]

While we believe NASA appropriately divided the Draft RFP into three categories, it was wrong to assign NAICS code 541512 to all three. Specifically, NAICS code 541512 is not the best fit for Category A because the predominance of work in this category will be for IT products, not services. In the Draft RFP, NASA described Category A as covering "a broad suite of IT solutions, i.e., technology in which there is an intertwining of products, such as a laptop, and services, such as maintenance and installation, requirements." The Draft RFP noted the following six technical areas in Category A: IT Computer Systems/Storage Devices/Computer Facilities; Networking Technology/Mobility & Communications; Software and Cloud Technology; Supporting Technology/Security Technology; A/V Equipment and Accessories; and Product-Based Services. The mandatory and additional sub-areas under each Technical Area further support that, while Category A involves a mixture of supplies and services, products will account for most of the anticipated work. Several of our clients told us that NASA officials confirmed this during the October 2023 industry day. This is also echoed in NASA's response to Question 157, in which NASA noted that SEWP V is approximately 70% hardware and 30% services.[4]

Under SBA Office of Hearings and Appeals ("OHA") case law, NAICS code 541512 is not the appropriate NAICS code unless more than 50% of the work on each order under Category A will be for services. OHA has found that NAICS code 541512 is the appropriate code when the contract predominantly involves services related to installation of computer systems, which could include further development, management and maintenance of an existing computer system.[5] As OHA has explained, "the central task of any procurement under [NAICS code 541512] must be computer systems planning and design."[6] However, when less than 50% of the contract's value is for services, and the government is acquiring substantial quantities of

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1 13 C.F.R. § 121.402(b).
2 Id. at § 121.402(c)(1)(i).
3 Id. at § 121.402(c)(1)(ii) (emphasis added).
4 Of note, Category B for SEWP V used NAICS code 541519.
5 See NAICS Appeal of Rsch. Innovations Inc., SBA No. NAICS-6196 (2023).
6 See NAICS Appeal of Engineering Services Network, Inc., SBA No. NAICS-5064 (2009).

IT products that account for more than 50% of the contract's value, NAICS code 541519 with the ITVAR exception is the appropriate NAICS code.[7]

Since the start of SEWP V, small business ITVARs have supplied significant volumes of IT products to many customer agencies. The small business ITVARs have developed and honed specialized expertise, authorized distributor relationships with the manufacturers, infrastructure, financial wherewithal, and other resources to supply the large quantities of IT products that agencies have routinely ordered under SEWP V. Conversely, companies that qualify as small businesses under NAICS code 541512 focus on computer design services and generally lack the capabilities, relationships, and resources to supply large volumes of IT products. Additionally, small businesses under NAICS code 541512 would quickly graduate to large business status under this code due to the substantial revenue attributable to reselling large quantities of IT products. Customer agencies will no doubt prefer to continue ordering from the experienced small business ITVARs that have the capabilities and expertise to continue fulfilling their needs for IT products and value-added services. These agencies may be forced to use other contract vehicles if they cannot directly access the small business ITVARs on SEWP VI.

2. Include all applicable class waivers of the NMR and pursue an individual waiver of the NMR for common product categories in which there are no small business manufacturers

Assuming NASA appropriately assigns NAICS code 541519 with the ITVAR exception to Category A for SEWP VI, NASA will also need to address the NMR in the Final RFP. As stated in the ITVAR exception, small business ITVARs must comply with the NMR in supplying IT products. Compliance with the NMR requires small business ITVARs to supply products made by another small business unless SBA has granted a waiver that permits the small business ITVARs to supply products made by large businesses.

There are several class waivers of the NMR that already exist and apply to certain classes of products that have been supplied under SEWP V and will be supplied under SEWP VI. For example, a class waiver exists for commercially available off-the-shelf laptop and tablet computers. There is also a class waiver for peripheral equipment when purchasing a mainframe computer. The full list of existing class waivers is available from SBA.[8] Pursuant to SBA regulations, NASA must include all available and applicable class waivers in the Final RFP.[9]

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[7] See NAICS Appeal of Microtechnologies, LLC, SBA No. NAICS-5489 (2013); see also Consolidated Safety Servs., Inc. v. United States, 167 Fed. Cl. 543, 555-56 (2023) (discussing that the NAICS code a contracting officer selects may not be a perfect fit for all aspects of the work in a procurement but must be the code that constitutes the "best" overall description of the work).

[8] See 13 C.F.R. § 121.1205.

[9] See 13 C.F.R. § 121.1206(a).

In addition to incorporating the existing and applicable class waivers in the Final RFP, NASA can and should pursue an individual waiver of the NMR rule for the SEWP VI contract. The most efficient and effective approach would be to pursue an individual waiver for the largest and most important categories of products obtained through SEWP V, such as: (1) computer desktops/workstations; (2) servers (stand-alone and rack servers); (3) all hand-held devices; (4) printers (large format printers down to deskside); and (5) networking gear. In these categories, customer agencies typically purchase products that are commercially available off-the-shelf and sold in substantial quantities that also must be Trade Agreements Act ("TAA") compliant. There are no small business manufacturers of the products in these categories that are commercially available off-the-shelf, sold in substantial quantities, and TAA compliant. Therefore, NASA could readily support its request to SBA for an individual waiver of these product categories by posting a sources sought to determine to confirm there are no small business manufacturers that make products in these categories that are commercially available off-the-shelf, sold in substantial quantities, and TAA compliant.

Pursuing the individual waiver for SEWP VI would not significantly delay the timeline for the Final RFP. We researched sources sought for individual waiver requests from other agencies and found the closing date for responses was typically between one to two weeks after the agency posted the sources sought. If, as expected, no small business manufacturers respond, NASA could then submit the individual waiver request to SBA pursuant to 13 C.F.R. § 121.1204(b). A few years ago, DHS obtained an individual waiver from SBA for its FirstSource III procurement that involves similar product categories. The process DHS followed for FirstSource III is an exemplar for NASA's pursuit of an individual waiver for SEWP VI.

Industry is prepared to help NASA with the individual waiver request. We could assist in drafting the product category specifications for the sources sought, in preparing the individual waiver request to SBA, and in communicating with SBA to facilitate its prompt review of the individual waiver request. This is a critical issue for the small business ITVAR community and for the future of the SEWP vehicle. As such, our firm and the many small business ITVARs we represent stand ready to facilitate NASA's pursuit of an individual waiver for SEWP VI.

In closing, we want to thank you for your consideration of this correspondence and for your efforts along with others in the SEWP Program Management Office who are working hard on SEWP VI. To summarize our points above, we believe SEWP VI will be best positioned to continue and build on the success of SEWP V if:

- NASA assigns NAICS code 541519, ITVAR exception to Category A;
- The Final RFP includes all existing and applicable class waivers of the NMR like the class waiver for commercially available off-the-shelf laptops and tablets and the class waiver for peripheral equipment when purchasing a mainframe computer; and

- NASA pursues an individual waiver of the NMR for the SEWP VI contract for products that are commercially available off-the-shelf, sold in substantial quantities, and TAA compliant in the following product categories: (1) computer desktops/workstations; (2) servers (stand-alone and rack servers); (3) all hand-held devices; (4) printers (large format printers down to deskside); and (5) networking gear.

If you have any questions or if you would like to discuss this correspondence, please do not hesitate to contact us.

Sincerely,

Jonathan T. Williams
Meghan F. Leemon

cc: Andrea M.T. Ross, SEWP Procurement Team Lead (sewp6@sewp.nasa.gov)
George Nicol, SEWP Deputy Program Director (George.s.nicol@nasa.gov)
NASA Office of Small Business Programs (smallbusiness@nasa.gov)
DeeAndra Heath, Procurement Center Representative (DeeAndra.Heath@sba.gov)

Women Veterans
Business Coalition
THE POLICY VOICE FOR WOMEN VETERAN
OWNED BUSINESSES

March 6, 2024

The Honorable Jon Tester
Chair, Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, D.C. 20510

Dear Chair Tester,

We are writing to express our support for legislation previously passed by the Senate Committee on Small Business and Entrepreneurship in 2016, the Veterans Entrepreneurial Transition Act, S. 1870. The legislation was introduced by Senators Tester, Moran, Capito and Coons. It would have established a 3-year pilot program, enabling up to 250 G.I. Bill benefit-eligible veterans who apply to the program to start a new business or purchase an existing business or franchise. The program would be overseen by the Administrator of the Small Business Administration (SBA) in consultation with the SBA Advisory Committee on Veterans Business Affairs and the Secretary of Veterans Affairs. The pilot program would have included a thorough application process and participation in an approved entrepreneurial training program. Interested veterans would be required to develop a business plan to be approved by their training program advisor and the SBA's Associate Administrator for Veterans Business Development.

While the SBA currently provides entrepreneurial business assistance to veterans, in our view, the key to success is access to capital. Allowing veterans to use their G.I. benefits to start a business is an idea whose time has come. While education benefits are an important benefit to G.I.s, not everyone chooses a career path that requires additional education.

A survey conducted by a veteran startup incubator, The Bunker, in 2015 found the following:

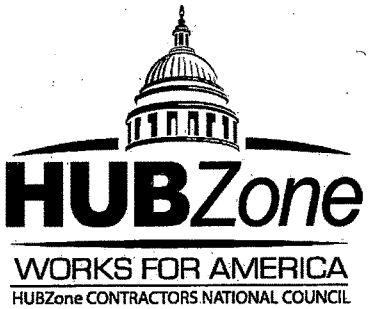
- Only 40 percent of survey participants have used their G.I. Bill benefit and, of those, only 12 percent completed three years or less of the program of study;
- An overwhelming 90 percent of the veterans who participated would like to use their G.I. Bill benefit toward starting a small business and
- Nearly 95 percent would complete an entrepreneurial training program in order to utilize their G.I. Bill benefit toward starting a small business.

We ask you to consider reintroducing this legislation in this Congress. The members of the Women Veteran Business Coalition, veterans who have successfully started and built a business, believe that veterans would benefit from this change in the G.I. Bill. Program assistance from SBA resource partners is vitally important to the future success of veteran-owned businesses. We believe additional capital would catapult the success of these veteran-owned businesses.

Thank you for your consideration of this request. Please feel free to contact Elizabeth Sullivan at esullivan@madisonservicesgroup.com for any additional information.

Sincerely,

Ann and Elizabeth Sullivan



Testimony for the Record

On Behalf of

The HUBZone Contractors National Council

House Committee on Small Business
Subcommittee on Contracting and Infrastructure

"Leveling the Playing Field: Challenges Facing Small Business Contracting"

February 15, 2024

The HUBZone Contractors National Council submits the following testimony for the record on the important topic of this hearing – small business federal contracting.

The HUBZone Council is a non-profit trade association providing information and support for companies and professionals participating in the Small Business Administration's (SBA) Historically Underutilized Business Zones (HUBZone) program. The Council strives to promote economic development in underutilized rural and urban communities, as well as maximize success for companies participating in the HUBZone program. The Council's membership includes HUBZone-certified small businesses, other small businesses, large businesses, and organizations interested in the HUBZone Program.

The HUBZone program is designed to provide economic assistance to underserved areas by awarding federal contracts to small businesses that operate and employ workers in those areas. The underlying principle behind the HUBZone program, established 25 years ago, remains the same today – to decrease unemployment and revitalize low-income communities by encouraging businesses to locate in these HUBZone areas. Congress, in its creation of the program, stated that the creation of new jobs in economically distressed areas presented a challenge to all levels of government. The HUBZone program was designed to incentivize businesses to locate in these areas, creating wealth creation through much needed jobs.

We thank the Committee for its continued commitment to support small businesses doing business with the federal government. It is because of this Committee's strong commitment to improving the HUBZone program that a substantial modernization effort was signed into law in 2018. However, substantial challenges and barriers continue to impact HUBZone companies. Since the program's inception, the Federal Government has never met its goal to obligate 3% of eligible prime contract dollars to HUBZone small businesses. This represents over 25 years of missed opportunities and unawarded dollars for companies that operate and employ workers in HUBZones. To date, the HUBZone program is the only SBA contracting program where the government continually fails in meeting its established goal.

Therefore, we recommend the following actions to increase awards to HUBZone companies and the communities they serve:

Remove the 20% Cap on Metropolitan Census Tracts. Effective July 1st, thousands of census tracts will lose their HUBZone eligibility due to the 20% cap on metropolitan statistical areas. While some of these areas may have improved and no longer qualify for the program, not all fall under this category. The statute limits the qualification of metropolitan statistical areas to no more than 20%, regardless of their current economic state. The Council believes this limit should be lifted, and areas meeting the statutory criteria should qualify for the program. This criteria states an area should have "50 percent or more of the households with an income less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent."

Apply the HUBZone Price Evaluation Preference to Task Orders. The HUBZone 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. We urge Congress to direct federal agencies to amend their interpretation to follow the law as Congress intended. As the federal government increasingly drives its spending through indefinite delivery, indefinite quantity (IDIQ) contracts, such as the "Best in Class" (BIC) contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders. This Committee recently passed the *Enhancing Competition in Contracting Orders Act* which clarifies that the HUBZone price evaluation preference is applied to task orders. Applying the price preference would significantly benefit the SBA, federal agencies, HUBZone firms and the communities they serve.

Remove the 10% Cap on Governor's Designated Areas. We propose allowing Governors to designate all qualifying areas as HUBZones annually rather than being restricted by the current 10% cap. This change will enable quicker and more expansive support to rural areas under the HUBZone program. We also recommend that the Governor's designation status should synchronize with the HUBZone mapping updates that occur every five years. The present annual assessment imposes an excessive workload on states and the SBA, while also limiting the opportunity for businesses to enact a significant change. This change would result in the immediate addition of 2,469 rural HUBZones across 27 states.

Amend the Criteria for Maintaining HUBZone Status. The HUBZone program provides flexibility for the requirement that 35% of its employees must be located in a HUBZone if a company holds a HUBZone contract awarded through the set-aside program. As employees and contracts change, a company may temporarily fall below the 35% threshold. The Council believes this flexibility should be applied to all HUBZone firms, regardless of whether they hold a prime contract awarded through the HUBZone set-aside program. If "attempt to maintain" is redefined to include all contracts, the program will significantly benefit by providing HUBZone companies more stability.

Redefining the Workspace in the Age of Telework. In the last four years, we have seen how crucial it is for government programs to adapt to changing realities, and the HUBZone program should be no exception. Therefore, flexibility should be established around the principal office requirement in the program. To account for the large percentage of contractor employees teleworking due to the COVID-19 pandemic, the Council recommends embracing telework by allowing employees to count toward the principal office requirement if they are teleworking in a HUBZone and report to the principal office. One of the objectives of the principal office requirement is to build wealth in HUBZone communities by having HUBZone employees spend money locally. Modifying the requirement to embrace telework satisfies this intention.

Change Reporting Requirements to Accurately Reflect Contract Set-Asides. Each year, SBA issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3%. Despite this small number, the federal government has never met its goal – in FY2022, only 2.65% of prime contract dollars went to HUBZone certified businesses. The Council believes that even fewer contracts have gone to HUBZone businesses due to inaccurate reporting. Agencies often count the same dollar value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the

Woman-Owned Small Business (WOSB) program, and the winning company is also a certified HUBZone and service-disabled veteran-owned small business (SDVOSB), those contract dollars count toward the agency's goals in each of the three programs. This practice ultimately inflates the data reported on small business contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

Expand Sole Source Contract Opportunities for HUBZone Companies. As government buying continues to trend toward buying through large contracting vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. The Council supports eliminating option years for sole source contracts to allow for $4.5/$7 million each year, instead of over the life of the contract—as changed in House-passed H.R. 190 during the 116th Congress. The Council also believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards. A current impediment to awarding sole source contracts is the requirement that a contracting officer must show that they do not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language "reasonable expectation," which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses. Additionally, SBA's Office of Government Contracting and Business Development (GCBD) should develop guidance to clarify how the acquisition workforce can award sole source contracts to small businesses.

Increase Utilization of Small Businesses to Counteract the Impact of Category Management. The Council continues to work to minimize negative impacts of category management on small businesses. These efforts resulted in a requirement in the *FY2020 National Defense Authorization Act* (NDAA) of annual reporting of small business participation on BIC vehicles, and governmentwide reforms issues by the Administration in December 2021. The Council remains dedicated to finding opportunities that ensure maximum participation of HUBZone businesses, as the government has never met its 3% goal. While we were encouraged by the guidance issued by the Office of Management and Budget (OMB) directing agencies to consider the effect of category management and contract consolidation on small businesses, it is unclear if any of the Administration's reforms have been adopted. We encourage OMB to issue an update on the implementation of these reforms.

Align the Rulemaking Processes of SBA and the FAR Council. 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, despite that final rulemaking by SBA is sufficient. In addition, the time lapse between FAR Council action and final rules promulgated by the SBA can span many years. To remedy this problem, the Council suggests

adding the SBA to the FAR Council, and requiring the FAR Council issue its rulemaking simultaneously with SBA.

Expand Highway Trust Fund to include HUBZone Small Businesses. Presently, HUBZone small businesses are excluded from competing for opportunities funded under the Department of Transportation (DOT) Trust Fund, which is approximately $2.3 billion dollars annually. Allowing HUBZone firms to compete would invest many of these dollars back into underutilized communities.

Adopting these changes will benefit both HUBZone businesses and the federal government. Increased opportunities for HUBZone businesses create greater opportunities for utilization of SBA programs and a more efficient procurement system, all which build resiliency of the industrial base. The HUBZone contractor community is optimistic that the Congressional actions providing more certainty, flexibility, and fair requirements for the program will help companies across the country meet the program's mission. Our member companies and all HUBZone certified firms are ready to compete on federal contracts to bring jobs, innovation, training, and economic empowerment to HUBZones. We appreciate the Committee's leadership on issues related to small business federal contracting and look forward to continuing to work with Congress to move procurement policies forward that benefit HUBZone companies and all other small business federal contractors. Thank you for your consideration of this testimony.

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