



Testimony of

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& Governmental Affairs

“Pathways to Procurement Innovation”

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

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

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

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

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

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<sup>1</sup> Bloomberg Government data

<sup>2</sup> OMB memo M-22-03

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

## **I. Strengthen agency focus on small business programs**

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

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

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

Due to recent SBA action, 85% of all NAICS codes are now eligible for the WOSB program.<sup>3</sup> The new SBA certification, although certainly not trouble free, does away with cumbersome requirements on contracting officers who want to make an award through the program. Yet, members of the Women’s Procurement Circle tell us women-owned companies continue to fight an uphill battle to win awards through this important set-aside program. Time and time again, women-owned businesses find that contracting officers do not understand the WOSB/EDWOSB program, requiring women contractors to come armed with details on the program and specific instructions on how to use it.

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

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

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

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

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

## **II. Harmonize small business programs**

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

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

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

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

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

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

### **III. Eliminate rulemaking discrepancies**

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

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

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

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

#### **IV. Shift the buying environment to counteract category management**

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

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

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

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

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

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

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

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

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

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

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

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<sup>12</sup> 13 C.F.R. § 121.402(b)(2).

Another challenge for growing small businesses is exceeding the SBA's size standard too quickly. As government contracts become larger, a small business must decide whether to grow beyond the small business programs to compete with very large companies, sell the business or stay small to avoid the difficulties of competing in a “full and open” environment. Essentially, small businesses are being penalized for their success. This is especially true for the 8(a) program, where businesses that have been successful over the 9 years struggle to succeed after graduation if they are no longer eligible for small business set-asides. Government contractors experience a unique pattern in their growth because it can be unpredictable, sometimes hovering in the single digits and then experiencing extreme growth over 2 or 3 years. This pattern of sudden growth is increasingly common due to the increased use of large contract vehicles, under which contractors can be awarded substantial task orders. Competitiveness takes time to build. Larger small businesses that are about to graduate from the small business market need time to recruit talented employees, develop their intellectual property and build infrastructure to compete at the next level. Congress should explore options to support small businesses continued success after they size out of SBA’s small business programs.

#### **V. Balance past performance requirements**

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

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

#### **VI. Clarify conflicting cybersecurity requirements**

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



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

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

## **Conclusion**

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

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

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

<sup>14</sup> FAR 25.4