



Testimony of

Belinda Guadarrama

GC Micro Corporation
Petaluma, CA

On Behalf of
GovEvolve

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

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

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

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

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

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

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

809 Panel Recommendation to Eliminate Small Business Set-Asides

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

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

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

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

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

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

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

Employee-Based NAICS Codes

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

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

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

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

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

ITVAR NAICS Code

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

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

has a stipulation that 51% of work performed under this NAICS code needs to have services or value add services tied to it. In Footnote 18 to SBA's table of size standards², it states that for a federal contract to be classified under the ITVAR exception 150-employee size standard, it must consist of at least 15 percent, but not more than 50 percent of value-added services. If the contract consists of less than 15 percent of value-added services, it must be classified under the appropriate manufacturing industry. If the contract consists of more than 50 percent of value-added services, it must be classified under the NAICS industry that best describes the principal nature of service being procured.

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

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

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

³ 13 C.F.R. § 121 (2016).

Sole Source Contract Opportunities

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

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

Adding SBA to the FAR Council

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

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

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

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

Subcontracting Plan Compliance

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

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

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

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