



Testimony for the Record

On Behalf of

The Montgomery County Chamber of Commerce (MCCC)
GovConNet Council

House Committee on Small Business Subcommittee on
Contracting and Infrastructure

“Leveling the Playing Field: The State of Small Business
Contracting”

May 11, 2023

The Montgomery County Chamber of Commerce (MCCC) GovConNet Council is pleased to submit the following testimony for the record. The Chamber would like to thank the Committee for working tirelessly to support small business contractors and pass policies that strengthen the industrial base.

Montgomery County has the second highest total number of small businesses engaged in federal contracting in the country, creating tens of thousands of local, high paying federal contracting jobs. A champion of federal procurement policy initiatives. MCCC's GovConNet Council promotes policies beneficial to federal contractors with an emphasis on small and midsize companies. Comprised of government contracting industry experts, the Council has worked extensively to move forward sound legislation and policies that are crucial to the success of the government contracting community. Below are policy changes we believe will greatly strengthen the industrial base and ensure maximum participation of small businesses.

Create A More Favorable Environment for Small Business Federal Contractors

Promote accountability, transparency, and best practices in subcontracting.

We believe that the government must work to promote accountability, transparency, and best practices in subcontracting. Amid a decline in awarding direct contracts and contract consolidation, it only makes sense that subcontracting is one of the best opportunities for small businesses to enter and grow in the federal market. Since the government does not have a relationship with subcontractors, small businesses have very little leverage to remedy this problem. We believe Congress should adopt changes to the subcontracting ecosystem to expand the importance of subcontracting plan performance in agency evaluation of offerors and make subcontracting plan performance a more important factor in winning future work. Introduced in the 117th Congress, H.R. 7694, *Strengthening Subcontracting for Small Businesses Act of 2022*, as well as any additional adaptations made in future legislation, are key to ensuring small business subcontractor success.

Expand the Rule of Two to include contracts above the simplified acquisition threshold.

The industrial base has significantly decreased over the past ten years – around a 40% decline in the number of small businesses receiving prime contract awards. The strength of the industrial base is a concern to the entire federal contracting community, as well as civilian and defense agencies. We believe it is time for Congress to amend the Rule of Two to increase contracting opportunities for small businesses.

The Rule of Two was created to support the ability for small businesses to compete for federal contracts. The rule requires all federal agencies to determine if there are at least two small businesses that could do the work for a fair price, and if so, the acquisition must be set-aside for small businesses to compete. This rule has been confirmed by the courts in several cases, including Kingdomware Technologies and Tolliver.

In the Tolliver decision, the Court of Federal Claims affirmed that agencies are required to apply the Rule of Two in all federal acquisitions over the simplified acquisition threshold (SAT) of

\$250,000. This ruling is not reflected in current law, which states that the Rule of Two only applies to acquisitions above the micro-purchase threshold, \$10,000, but not greater than the SAT. In FY2022, the federal government awarded approximately 120,000 contracts over the SAT. Given such a large number of contracts above this threshold, it is critical to ensure that agencies are properly applying the Rule of Two, which could lead to increased small business set-asides.

While the Rule of Two has been confirmed by the courts, we believe legislative changes should be made to bring acquisition rules and court rulings into agreement. The 15 USC 644(j) Small business reservation, 15 USC 644(r) Multiple award contracts and 15 USC 657s(a) In general, should be changed to reflect judicial rulings.

Removing the restriction that the Rule of Two only applies to contracts under \$250,000 will require agencies to complete the same market research on all contracts above the micro-purchase threshold. Agencies already know how to perform market research; therefore, this expansion would not cause an undue burden to the acquisition workforce. By amending the necessary legislation to conform with the court cases cited above, small businesses will have a better opportunity to win contracts and provide innovation and flexibility for federal buyers.

Raise sole source thresholds to allow amounts to be awarded each year.

The Chamber supports ongoing Congressional efforts to raise sole source thresholds to \$4.5 million generally and \$7 million for manufacturing contracts and eliminate inclusion of option years, which would allow these amounts to be awarded each year. 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 Chamber supports eliminating option years for sole source contracts to allow for \$4.5 million/\$7 million each year, instead of over the life of the contract.

Increase utilization of small businesses to counteract the impact of category management.

The Chamber also continues the effort to minimize the negative impacts of category management on small businesses. The overall number of small business vendors receiving awards for common products and services declined from 95,000 businesses in FY2016, when category management began to be implemented, to 79,000 in FY2019.¹ This decline is also impacting midsize companies and others – according to Bloomberg Government, the count of active federal prime contractors fell 17.5% from 123,790 in FY2016 to 102,047 in FY2020. The Chamber remains dedicated to finding opportunities that ensure maximum participation of small businesses.

Fill the Office of Federal Procurement Policy (OFPP) Administrator vacancy.

We believe that confirming an OFPP Administrator is essential to fulfilling OFPP's mission to provide overall direction for governmentwide procurement policies, regulations, and procedures and to promote economy, efficiency, and effectiveness in acquisition processes.

¹ <https://www.gao.gov/assets/gao-21-40.pdf>

In December 2021, the Biden Administration released a set of reforms geared toward increasing equity for underserved small business contractors. These reforms implemented significant changes to the federal government's use of "category management" to boost contracting opportunities for underserved small businesses. We support these reforms and applaud the Administration's goal to increase new entrants to the federal marketplace and reverse the decline in the small business supplier base. However, we are concerned that the absence of an OFPP Administrator is hindering the implementation of these reforms. In sum, we want to ensure that small businesses have a seat at the table when it comes to federal acquisition issues, which requires clear direction from an OFPP Administrator.

Allow deduction of research and development (R&D) expenses and expenditures from total revenue for size determination.

Small businesses play an important role in the revitalization of domestic competitiveness and strengthening supply chains through R&D. However, small business contribution to R&D does not discount the costs that small businesses assume when they take on innovative ventures. Investing in new technologies is expensive and often risky for businesses that lack significant expendable resources. Small business programs, such as the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) administered by the SBA, provide a pathway to success for America's most inventive entrepreneurs by allowing them to continue to drive innovation and create jobs. However, due to the total revenue for size determination standards for small businesses, many entrepreneurs who expend significant resources toward R&D find themselves no longer qualifying as small businesses, thus limiting participation in the benefits these programs provide. For example, a business with an average revenue of \$39 million is expected to compete with large businesses. The numbers bear out how difficult such competition can be.

To better assist companies in the ability to compete for R&D investment, we propose to permit businesses to subtract Independent R&D expenses and expenditures from that business's "receipts," as defined by 13 CFR 121.104, for the purpose of calculating size. This supports the government's initiative to stimulate technological and biomedical innovation and allows companies to continue to pursue and develop new products and processes, without undue penalty.

Definition: R&D expenses (as defined by the IRS) encompass the allowable costs of basic research, applied research, development, plus systems and other concept formulation studies. Costs cease to be R&D when preparing for the manufacturing or service delivery phase.

Exclusion Cap: The revenue deduction should be limited to no greater than two times the NAICS size standard. For employee-based standards, for every \$50,000 spent in R&D dollars, a single employee may be removed for the calculation to determine size.

While these proposals only tackle certain components of our procurement system, we believe they are necessary steps to strengthen the small business industrial base. Increased resiliency of small businesses benefits both taxpayers and the federal government, while supporting the job creators and critical employers across our country. We are eager to continue our work with the Committee to address these issues and look forward to working together to achieve solutions that will strengthen the industrial base.