

April 1, 2019

The Honorable James Inhofe
Chairman
Committee on Armed Services
U.S. Senate
Washington, D.C. 20510

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
U.S. Senate
Washington, D.C. 20510

Dear Chair Inhofe and Ranking Member Reed:

We are writing today to underscore our deep reservations on small business policy changes recommended by the Section 809 Panel in its final report published in late January 2019. 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 we recognize that the Commission was tasked with a complex and comprehensive mission, the small business community, represented by the organizations and individuals below, have everything to lose should the recommendation of the panel eliminating small business set-asides in exchange for a 5% price preference be adopted by the Department of Defense (DoD).

We summarily reject the notion that small businesses would benefit from this change. The panel writes in 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. Contracting officials would not be required to publicly advertise their requirements and would not have to set-aside those requirements for small businesses, thus eroding the ability of the nation's industrial base to compete or access the federal market. We suggest that the recommendation seeks to limit competition to companies already providing goods to the federal government, rather than widen the vendor base.

Since small business set-asides are the life blood of small business contractors, our experience with small business contracting programs tells us that this proposal by the Commission would not have required a lengthy explanation. Simply stated, this recommendation is a thinly disguised attempt to do away with small business preferences as required under the Small Business Act. In exchange for eliminating small business set-asides in this category, the Panel suggests that small businesses would instead get a 5% price preference. We do not believe that these are sufficient incentives for agencies to award contracts to small businesses.

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

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. As a federal procurement lawyer recently stated, "...in the context of a best value procurement, I can't recall a single instance in my career in which the HUBZone price preference determined the outcome..." Therefore, it is reasonable to assume that a 5% price preference would have the same unsatisfactory outcome.

In conclusion, we ask the Committee to reject any attempt to approve DOD's adoption of these recommendations. We ask instead that the Committee support the more than 51,000 small business contractors who support the DOD's mission by preserving 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. Thank you for your consideration of our concerns. If you have any questions, please contact Barbara Ashe at bashe@montgomerychamber.com.

Sincerely,

ABN Technologies
AllStaff Solutions
Avanti Corporation
California Association for Microenterprise Opportunity (CAMEO)
Crowned Grace International
Government Contract Support, LLC
GovEvolve
Growth Strategy Consultants, LLC
HUBZone Contractors National Council
Intranet Communications Group
Koprince Law LLC
MMN Consulting, LLC
Montgomery County Chamber of Commerce (MCCC) GovConNet Council
National Association for Black Veterans (NABVETS)
National Veteran Small Business Coalition (NVSBC)
Panagora Group
Repperio
RSM Federal
Small and Emerging Contractor Advisory Forum (SECAF)
Small Business Majority
Summit Insight
U.S. Black Chambers, Inc. (USBC)
VET-Force (Veterans Entrepreneurship Task Force)
VETS Group
Vietnam Veterans of America
Women Impacting Public Policy (WIPP)