

July 22, 2024

The Honorable Jack Reed  
Chair  
Senate Armed Services Committee  
228 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Roger Wicker  
Ranking Member  
Senate Armed Services Committee  
228 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chair Reed and Ranking Member Wicker,

We are writing to urge you to include the below amendments in the FY2025 National Defense Authorization Act (NDAA). The amendments listed below are critical to the success of small businesses who contract with the federal government. Creating opportunities and removing barriers in the federal acquisition process will encourage small businesses who are a vital component of the contracting industrial base, to deliver valuable and innovative solutions to the federal government.

- **Increase the Amount of Sole Source Contracts That Can Be Awarded to Small Businesses. (Amendments to Contracting Authority for Certain Small Business Concerns)** Limits on sole source awards to small businesses have contributed to the ongoing industrial base decline. Currently, sole source awards to individually-owned 8(a), HUBZone, Service-Disabled Veteran-Owned (SDVOSB), Women-Owned and Economically Disadvantaged Women-Owned Small Businesses (WOSB/EDWOSB) are capped at a total of \$4.5/\$7 million (manufacturing) over the life of the contract. For a five year contract, that equates to less than \$1 million per year. Given that the size of a typical government contract far exceeds this amount, the justification required to award such a small sole source contract through these programs requires more time and effort than contracting officers are willing to devote. Thus, dollars are falling away from small businesses and increasingly awarded through larger contract vehicles and vendors. Over the past four years, both the House and Senate Small Business Committees have attempted to increase sole source thresholds to bring them more in line with government buying. Broad bipartisan support for increasing small business participation in the federal marketplace dictates this change is needed to bolster awards to HUBZone, small disadvantaged, veteran, and women-owned businesses.
- **Remove the Impossible Standard Required to Award Sole Source Contracts to Small Businesses. (Reasonable Expectation Requirement)** A current impediment to awarding sole source contracts to women-owned, HUBZone and veteran-owned businesses 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, SDVOSB or WOSB small business concerns. There is confusion around the language “reasonable expectation,” which has been interpreted as restricting sole source awards to vendors who are the only supplier in the federal market who provide this good or service. Contracting officers have hesitated to use this important tool to utilize small businesses because the standard in current law would open the door to protests. Removing this onerous language would result in an increase for all socioeconomic groups who are often first time entrants into the federal market. Eliminating this requirement for companies participating in the HUBZone, SDVOSB and WOSB programs would greatly increase these direct awards to small businesses.

- **Increase the Governmentwide Goal for Procurement Contracts Awarded to Small Business Concerns.** The FY2024 NDAA increased the SDVOSB governmentwide goal by two percent. However, the law did not simultaneously increase the overall small business goal of 23 percent to accommodate this adjustment to the SDVOSB goal. The overall governmentwide goal has not been raised significantly since it was established in 1988 at 20 percent. As small business set-aside programs have been added since that time, all of the SBA's set-aside programs are now competing for agency utilization out of a smaller pool of opportunity.
- **Strengthen the Ability of Small Businesses to be Successful Subcontractors. (Small Business Subcontractor Utilization Act of 2024)** Amid a decline in awarding direct contracts to small businesses and greater contract consolidation, subcontracting has become one of the best opportunities for small businesses to enter and grow in the federal marketplace. However, working as a subcontractor comes with its own set of challenges. Too often, small companies that help a prime contractor win a proposal receive little or no work after the contract is awarded. Since the government does not have a relationship with subcontractors, small businesses have very little leverage to remedy problems with the prime contractors. To mitigate instances where subcontractors are not utilized as part of contracting plans despite being listed on proposals and subcontracting plans, this amendment requires prime contractors to provide their first-tier subcontractors and contracting officers with individualized utilization reports and allows subcontractors to confidentially report underutilization to the contracting officer. The contracting officer is required to investigate and assess liquidated damages if the review shows that the prime contractor did not make a good faith effort to utilize the subcontractor. Lastly, the legislation requests a report on the improvements that can be made to contracting databases to better evaluate prime contractors' achievement of their subcontracting goals. This is an important requirement because good data will shine the light on issues related to subcontracting.

The NDAA is a critical vehicle for implementing policies that create a robust industrial base. We urge inclusion of these amendments into the Senate FY2025 NDAA. If you have any questions, please contact Elizabeth Sullivan at [esullivan@madisonservicesgroup.com](mailto:esullivan@madisonservicesgroup.com) or (202) 626-8528.

Sincerely,