

Testimony of

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“Reauthorization of SBA’s Contracting Programs”

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Chairman Rubio, Ranking Member Cardin, and Members of the Committee, my name is Laurie Sayles, I am a veteran who served ten years in the United States Marine Corps and now the owner and founder of Civility Management Solutions (CivilityMS), a professional consulting service working within both the government and commercial space. My company is located in Greenbelt, MD. I am a member of Women Impacting Public Policy (WIPP) and Vet-Force, both organizations who have assisted in my growth.

CivilityMS provides project, program, financial and grants management; training; conference logistics and administrative support through contractual work for several federal agencies such as Department of Homeland Security, Department of Transportation, Department of Health and Human Services, U.S. Army, U.S. Air Force, NASA, and the Department of Veteran Affairs. Additionally, we have both prime and sub-contracts with State and Local Governments such as the Department of Education, the Department of Housing and Baltimore County. My company is able to obtain such clients through the procurement and contracting process through the Small Business Administration (SBA). I am a certified Economically Disadvantaged Women Owned Small Business (EDWOSB); and Woman Owned Small Business (WOSB) through the Small Business Administration; a VA verified Service-Disabled Veteran Owned Small Business (SDVOSB); and a certified 8(a). I, like many, have my share of experiences with SBA, as well as the Department of Veterans Affairs, to acquire the proper certifications. My testimony today will address the requirements of these contract programs with the hope of providing recommendations to the Committee that will assist during the reauthorization process to enable the SBA to obtain its desirable outcomes of increasing veterans and women small business contractors to the federal government.

Woman Owned Small Business - WOSB/EDWOSB

In 2012, the National Women's Business Council reported there were 9,878,397 women-owned businesses in the United States.¹ That's an increase of 2,086,282 businesses, or 26.8%, from 2007. Of nonfarm and privately-held businesses, 36.3% are women-owned, whereas in 2007, 28.8% were women-owned. Additionally, women-owned businesses generate more than \$1.4 trillion in receipts. Despite these great strides, women-owned businesses remain at a disadvantage in many ways, particularly within the federal procurement marketplace. In 1994, the Federal government established a five percent procurement goal for women-owned businesses. However, twenty-five years later, that goal has been achieved just once. In FY 2017, women-owned small businesses received \$20.8 billion, or 4.71 percent of all contracting dollars, missing their goal—a lost opportunity of over \$1.28 billion for women-owned small businesses.²

There are currently 70,000+ WOSBs registered to do business with the federal government, with 11,000 currently certified in the SBA WOSB/EDWOSB program. A robust certification program will ensure these companies can continue to do great work for the government, as well as create jobs in their communities.

Regrettably, I have yet to receive a contract under the WOSB procurement program. From my perspective, there are a few barriers to the program. The first is that

¹ Women-owned businesses, as defined by the U.S. Census, are businesses in which women own 51 percent or more of the equity, interest, or stock of the business. Men-owned businesses are defined as men owning 51 percent or more of the equity, interest, or stock of the business. Equally men-/women-owned businesses those in which the equity, interest, or stock of the business is shared 50-50 among men and women owners. Publicly held, foreign-owned, and non-profit businesses are not included in this data.

² U.S. Small. Bus. Admin., *Government-Wide Performance: FY 2017 Small Bus. Procurement Scorecard* (last accessed June 10, 2019), https://www.sba.gov/sites/default/files/2018-05/GovernmentWide_Scorecard_FY2017.pdf.

not all NAICS codes are eligible, and the second is that the contracting officer has to verify the certification documentation. When the SBA finalizes its WOSB certification, removal of this step will remove at least one barrier to awarding contracts through this program.

Additionally, I agree with many of my fellow WIPP members and suggest changing sole source rules to make them consistent. While the bill H.R. 190 was a great first step in its passage in the House, 8(a) companies currently obtain sole source contracts at \$4/6.5 million without market research or justification, while small businesses owned by Native entities are eligible to be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs require a contracting officer to justify through market research that the contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB/EDWOSB concerns at a reasonable price. I agree with WIPP's recommendation that Congress put all socioeconomic contracting programs on equal footing. One group should not have a variance over another.

Winning sole source contracts is an issue for many women small business owners. In 2015, federal agencies were authorized to award sole source contracts to women-owned small businesses eligible for the (WOSB) Federal Contract Program. This was a huge win for women business owners, and WOSBs believed doors would be opened to millions more federal contracting dollars. However, since the authority was granted in 2015, to date the total amount of sole source awards to WOSBs/EDWOSBs is only \$278 million³.

³ Bloomberg Government. Contracts Intelligence Tool.

Furthermore, subcontracting is of great importance to small businesses. Although government data is not easily accessible, I hear from many small businesses that often subcontractors listed on a prime's subcontracting plan end up with no work, or less work than they anticipated. While we recognize that there are many reasons why prime contractors need to deviate from their subcontracting plan, I believe that more transparency and accountability would help. A suggestion to increase accountability is to designate someone in an agency to be responsible for monitoring compliance and raise questions if the prime's utilization of subcontractors is falling significantly below its subcontracting plan. Let me suggest that small business advocates in the federal agencies should be empowered to take on this role. Since prime contractors report this data bi-annually, small business contracting officers should be required to review where each prime contractor stands in regard to meeting their subcontracting goals on specified contracts. If the prime falls significantly below its stated subcontracting goals, justification from the prime and steps to meet the goal should be required.

My business experience with SBA's WOSB/EDWOSB certification was not beneficial upon establishing CivilityMS in May 2012, and I purposely waited until I was 'no longer' an employee of another company to meet the self-certification criteria. SBA's WOSB certification asked one question that I could not answer favorably when I initially established CivilityMS, which was "do you work for your company during normal business hours?" This made me pause, and I waited to self-certify in September of 2012. Therefore, I really did need to stop employment in order to get this certification, which led to no contract awards. Even though I had managed up to 128 contractors, and an estimated

\$11.5 million in contracts with six different agencies, those relationships had no value as a WOSB/EDWOSB.

VA Verified Service-Disabled Veteran-Owned Small Business

I always knew that I would become an entrepreneur. From my early beginnings in my parents' home in Chicago selling candy to the neighborhood kids, to my active duty in the Marine Corps, I developed leadership, integrity, teamwork and persistence which is essential in starting a business. I earned the respect as an African American woman in a man's world. Now, I am an outspoken advocate for veterans, as I was elected as the first Woman Veteran Officer on the Veteran Entrepreneurship Task Force (VET-Force) Committee and was nominated to become a representative on the SBA Inter-Agency Veteran Task Force. In this role, I listen to many fellow veteran small business owners and the many frustrations that they face as they strive to ascertain VOSB and SDVOSB certifications.

For many veterans, returning to civilian life can be difficult. It's a process and takes time to adjust. Adding the desire to start a business only creates another level of adjustment and perseverance. Working with many government agencies can become frustrating and difficult, especially understanding regulations and rules that are applicable to one's specific industry. For veterans, we also have an additional agency, the Department of Veterans Affairs (VA). While there are small business certifications for veterans who are seeking contracting opportunities with the government and those who are disabled-veterans seeking as well, many acquire their certification from the VA; however, they can self-certify with the SBA. An issue has been that the two agencies have different definitions and standards of control. As of October 1, 2018, the VA the

Department of Veterans Affairs (VA) amended its regulations governing the VA's Veteran-Owned Small Business (VOSB) Verification Program. The National Defense Authorization Act for Fiscal Year 2017 (NDAA), placed the responsibility for issuing regulations relating to ownership and control for the verification of VOSBs with the United States Small Business Administration (SBA). This regulation referenced SBA's regulations governing ownership and control and added terms to the verification process. The NDAA also provided that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran-Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership plan (ESOP).

I support this change because I believe the SBA should be the certifier of VOSB/SDVOSB firms since they know how to administer certifications. The VA should be tasked with what it knows how to do—determining a veteran's eligibility. Putting the SBA in charge of the certification will not be accomplished without additional resources, due to the volume of veterans who are in the program. Issues of concern to the veteran's community are the requirements around military spouse participation and the requirement that the veteran in charge of the company must be the highest paid person in the company. This has been problematic for some veterans whose businesses are young but require highly technical staff. In those cases, the owner may take a lower salary until the company experiences significant growth.

Another certification requirement that is troublesome requires service-disabled veterans to work at their company during normal business hours. The SBA, however, has not included a full-time business hours requirement, which means a veteran can have other opportunities as well as the ability to control the company's management and daily

business operations. But, if veterans are not able to work at the company during its normal business hours, there is a rebuttable presumption that veterans are not actually in control. The SBA would also prefer veterans work closer to their headquarters or job sites as the published rules mentioned that a veteran “is not located within a reasonable commute” to the company, there’s a rebuttable presumption that he or she does not control the firm.⁴

The SBA Ownership and Control of Service-Disabled Veteran Small Business Concerns 2018 rule is a first major step in clarifying the SBA’s SDVOSB ownership and control requirements. For years, we all know, the SBA’s SDVOSB regulations were ambiguous. Even the SBA’s Administrative Judges have resorted to using the 8(a) Program regulations to evaluate certain aspects of SDVOSB compliance. Whether one agrees or disagrees with a specific requirement, it is better to know that it exists, instead of being caught off guard during a protest when a contract is at stake.

My business experience with SDVOSB VA verification became beneficial because I was involved with VET-Force and therefore knew the law on the VETS First program and the Supreme Court Ruling of justifying through *Kingdomware vs. U.S. CivilityMS* pursued simplified acquisitions in order to obtain prime contract awards for building past performance, and we responded to a full and open sources sought for an Exhibit Booth Logistics contract with the Department of Veteran Affairs. We were perplexed when the Contracting Officer (CO) informed us that the Program Manager preferred to work with a woman-owned midsize firm, who had been doing the work for many years. Since I was educated on the VETS First program, I informed the CO that due to the *Kingdomware*

⁴ Matthew Schoonover, *SDVOSB Eligibility Update: SBA Issues New Rule*, Shalloon, (Sept. 28, 2018), available at <http://smallgovcon.com/service-disabled-veteran-owned-small-businesses/new-sba-rule/>.

decision, our SDVOSB had to be considered. I even suggested that they do a sole-source; however, the contract was maintained as competitive. As a result, we have won that annual contract for three consecutive years since 2016. I would also like to note that the Department of Veteran Affairs realizes the shortage of women veteran's participation in VA government. A pilot program is being established to increase economic opportunities to women service-disabled veterans.

Lastly, I am grateful for the Veterans Institute of Procurement (VIP) program in Rockville, MD and specifically for its National Director, Barbara Ashe, who had the vision for this program. This is an excellent program for military veterans to come together for three days and receive training by some of the best in the business. Additionally, the camaraderie of veterans will always be relevant and CivilityMS is still connected to two potential teaming partners.

8(a) Business Development Program

I was introduced to Federal Government Contracting almost 11 years ago, and I knew the impact it would have on being an entrepreneur in terms of a legacy creation. The WOSB/EDWOSB certification was the first one I obtained easily, because it accepts self-certification. The 8(a) Business Development Program was the last certification I obtained. While I was fortunate to obtain my certification with the assistance of my local SCORE Chapter, the SBA Office of the Inspector General (OIG) reported that since 2010, there has been a consistent decline in the number of small business owners participating in the 8(a) Program. There were approximately 7,000 in 2010, and are now only 4,600 in

2015, with an even steeper decrease in January of 2016 to approximately 4,495 small business owners.

There are many potential reasons for the decrease in participation, but I would like to highlight a few changes that would help. The first is the requirement of *“the Administrator to approve the sale of an 8(a) firm or transfer of 8(a) contracts to another eligible 8(a) concern.”* This should be removed. While it is understandable that the government would not want 8(a) contracts to be performed by ineligible firms, there is no public policy reason to prevent an 8(a) firm from selling itself, or novating contracts, to another eligible 8(a) concern. Obtaining the Administrator’s approval seems burdensome and unnecessary. Mergers and acquisitions are a common occurrence in government contracting. Removal of this prohibition should result in increased 8(a) Program participation and contracts performed by eligible 8(a) participants. The Administrator does not need or should not be required to verify any acquiring or receiving firm as an eligible concern - that can be done by the relevant District Office.

Currently, the respective District Office makes their recommendation which is reviewed by the Associate Administrator for 8(a) Business Development, the Associate Administrator for Government Contracting & Business Development, the General Counsel, and typically the Chief of Staff and/or Deputy Administrator and then the Administrator. Consequently, this review process can take a one year or longer, which is inefficient and devalues 8(a) concerns, preventing an economically disadvantaged small business owner from competing for federal contracts. The length of time and risk of possible denial of the waiver and possible termination of 8(a) contracts places 8(a)

concerns at a competitive disadvantage compared to all other government contracting firms.

My business experience with an SBA 8(a) certification was extremely beneficial to CivilityMS, however, I waited until the federal government employees suggested I obtain an 8(a) certification. Within five months of being 8(a) certified, we won our first direct award from an oral presentation amounting to \$2 million for two years on a complex project. After approximately 4.5 years, I was able to leave my kitchen table, obtain an office space and hire corporate staff to assist with the growth of CivilityMS.

CivilityMS was fortunate to be accepted in a pilot program referred to as the “8(a) Accelerator” that was established by Bowie University, BowieBic office, in Prince George’s County, Bowie, Maryland. This 6-week program offered four-hour training sessions to newly developed 8(a) firms in Maryland. The facilitators were both successful 8(a) graduates and 8(a) participants soon to graduate. The value was not only the training provided, but the ability to obtain a mentor or joint venture partner that has been vetted as a trusted business partner. The SBA Washington District Office collaborated in the development of the design and delivery of the pilot program, and two Business Opportunity Specialists (BOS) were in attendance at each session. CivilityMS had the added value of their BOS attending several of these training sessions, which allowed us to get to know each other. An 8(a) firm must market their company in order to get the largest value of the 8(a) business development program, but being able to depend upon your BOS for special needs is very important. For example, CivilityMS would like our BOS to assist us when we identify a qualifying opportunity by submitting search letters.

As I mentioned, business opportunity specialists (BOS) provide critical procurement assistance, but they are limited to working with 8(a) participants. The Congress should explore expanding their portfolios to include other socioeconomic programs. This would require additional training and additional staff, but I believe the government would see tangible results.

Given the importance of the 8(a) Program to the success of my business, I am disheartened when I hear that businesses have received their 8(a) certification but have no idea how to take advantage of it. I suggest the SBA consider a prequalification component to potential 8(a) applicants, thus ensuring that they apply only when they are ready. It is a shame to see years wasted in the program due to unfamiliarity with federal contracting.

Creating a pathway forward for veterans, women, HUBZone and 8(a) certified companies to thrive in their businesses is important. However, accountability and proper implementation of SBA's contracting programs is necessary to ensure a level playing field. The government has only met its 5% goal of contracting with women once, and has never met its 3% HUBZone goal. I urge the Committee to think big when it comes to reauthorizing contracting programs in order to strengthen small businesses poised for growth.

This concludes my testimony and I am happy to answer any questions.