



Testimony of

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On behalf of Women Impacting Public Policy (WIPP)

Before the Senate Committee on Small Business and

Entrepreneurship

Reauthorization of SBA's Contracting Programs

June 12, 2019

Good afternoon Chairman Rubio, Ranking Member Cardin and Members of the Committee, my name is Vicki Marino. I own Kenmar General Contracting located in Key West, Florida. I am here today to testify on behalf of Women Impacting Public Policy (WIPP), a nonpartisan organization advocating on behalf of women entrepreneurs. Thank you for inviting me to testify today on a very important segment of our economy – the federal contracting sector.

Ten years ago, I decided to become a federal contractor after showing success in the commercial marketplace as the first licensed woman general contractor in Monroe County, FL. Rather than learning federal contracting through subcontracting, I chose the path of joining a Mentor-Protégé program. It turns out this was one of the best decisions I have ever made. Working with the Small Business Administration (SBA) and a large company afforded me access to bonding, working capital and business development—resources necessary to build past performance and become a successful federal contractor. We now possess a facility clearance at the secret level and are bonded \$10M single and \$15M aggregate. We also recently secured a Women Owned Small Business (WOSB) sole source contract.

I want to take a moment to give a special shout-out to a contracting officer, Paula Claudio, who took the time to ensure that women understand the women-owned small business federal contracting program and provided clear opportunities and examples for women who contract with the Joint Interagency Task Force South (JIATFS). In my specific case, Paula shepherded my company's sole source award through the U.S. Southern Command (Southcom), making it the first to be awarded out of the 410th Contracting Support Brigade to a woman owned construction company. I cannot tell you how important this action was to further our federal presence and to provide another opportunity for an exceptional past performance rating. Due to this effort, last

week, I hired my first full time employee in San Juan, who is in the process of opening up an SBA bona fide office for my company in Puerto Rico to help with the rebuilding effort.

Despite working as hard as I could to make my 8(a) certification productive, the fact of the matter is that it took me every bit of 9 years to break into the federal market. Had it not been for the support of WIPP's knowledge of the WOSB program, receptive contracting officers and assistance from the SBA, I would not have been able to get much traction. My personal experience through the SBA's contract certification process has allowed me to understand the agency's protocols. I would like to share a few observations based on my experience, which I hope the Committee will find helpful as they reauthorize the Small Business Act and the contracting programs administered.

Given the complexity of government contracting and the length of time it takes to build a Contracting Performance Assessment Rating System (CPARS) exceptional rating, which by the way, we just received our first exceptional CPARS rating on May 14, 2019, may be useful to consider adding a transition time for 8(a) firms transitioning out of the program. As I am sure this Committee hears, 8(a) companies struggle with the transition to competing in a larger pool of small businesses, or full and open competition. SBA's contracting resources should be expanded to include support for businesses at this stage. While much is available for businesses entering the federal market, companies like mine would benefit from resources aimed at federal contractors who are experiencing growth.

The number of federal contractors working on unclassified prime contracts is at its lowest level despite a steady rise in government contract spending.¹ In FY18, the vendor count of 115,000 contractors reflected a 27% drop in a 10-year period.² These statistics show that prime contracts and task orders are growing larger, and contracting vehicles designated as “Best-in-Class” under the governmentwide category management initiative are becoming the contracting vehicle of choice. These statistics also bring attention to the need to adapt to this way of buying, which requires new strategies for small businesses and changes to SBA contracting programs to increase small businesses participation. SBA has increasingly encouraged small businesses to consider teaming, joint ventures, and mentor-protégé strategies to meet these larger requirements. While the emphasis shifts on the importance of subcontracting, we would note that data on subcontracting is not readily available—thereby hampering a small business’ ability to know which primes to approach and which agencies to target for subcontracting opportunities.

In addition to new buying strategies, we encourage this Committee to look at changing socio-economic programs, such as WOSB/EDWOSB, HUBZone, SDVOSB and 8(a) programs to better reflect the trends in federal buying and the reluctance of federal contracting officers to use these programs.

Time and time again, women-owned businesses tell us that contracting officers do not understand the WOSB/EDWOSB program, requiring women contractors to come armed with details on the program and specific instructions on how to use the program. In earlier testimony

¹ Paul Murphy, “Federal Supplier Base Continued to Shrink in Fiscal 2018,” Bloomberg Government (May 23, 2019).

² *Id.*

by GAO, they found that contracting officers issued awards under the wrong NAICS codes to WOSBs and made other contracting mistakes. It seems to me that SBA and other federal agencies could put in place an incentive program for contracting officers to use these socioeconomic programs. Even a simple recognition program would be helpful to the contracting officers that go the extra mile of using these programs in their procurements. Recognition goes a long way in securing promotions and building a successful career path.

This lack of understanding was illustrated in a recommendation offered by the Section 809 Panel, which reviewed ways to streamline DOD's acquisition policies. The Panel recommended eliminating small business programs for readily available products and services purchases under \$15 million, and instead instituting a 5% price preference for small businesses. Commissioners contended publicly that small business programs are too complex to be utilized. Rather than eliminate these programs, we recommend changes be adopted to simplify and streamline small business purchasing programs. With respect to the WOSB/EDWOSB program, we recommend that Congress require education for contracting officers. The law establishing these programs has now been in place since 2011— a full eight years. Yet, given the lack of knowledge about the program, it is still considered "new."

Additionally, we suggest changing sole source rules to make them uniform. H.R. 190, the "Expanding Contracting Opportunities for Small Businesses Act of 2019," passed by the House, is a good start. This legislation allows for WOSB sole source awards of \$4/7 million per year of a contract rather than the current one-time award of \$4 million/\$6.5 million. We support this legislation and urge the Senate to support, with one change to the bill that would provide clarification to the acquisition community. We suggest amending H.R. 190 each time it reads

“anticipated award price” to read “anticipated base year award price.” The term, “anticipated award price” always means total price for all programs to both contracting officers and agencies. Therefore, in order to make sure that it is clear that these amounts should be awarded each year, this change should be made.

However, this cannot be construed as parity. 8(a) companies can currently obtain sole source contracts at \$4/7 million without market research or justification. Small businesses owned by Native entities, such as Native Hawaiian Organizations (NHOs), Tribes, and Alaska Native Corporations (ANCs), are authorized to participate in the SBA 8(a) program under special rules. They can be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs require that a contracting officer must justify through market research that not two or more offers at a reasonable price are expected. The contracting community has interpreted this as “you are the only company in the world that performs this work,” leading to exceedingly few sole source awards. WIPP recommends Congress put all socioeconomic contracting programs on equal footing.

We understand that there are reasons for some differences in the programs, but we reject the notion that each program must be unique with its own set of complicated certifications. This only leads to impediments to awards, as seen in the HUBZone and WOSB programs, which are underutilized by federal agencies. It appears to us that certification for the WOSB/EDWOSB program should be as streamlined as possible, given that many of the elements required are also requirements for other certifications. In addition, we believe that all WOSBs who are willing to participate in the federal market should be certified even if they do not intend to use the WOSB/EDWOSB set aside program.

Certifying to SBA rather than simply reporting ownership in SAM.gov³, we believe would discourage fraudulent behavior. A critical component of certification is a site visit, and we know that SBA does not have the resources to perform site visits for every company entering the program today. We suggest that this is a role that can be filled by utilizing third party certifiers.

With respect to the definition of what qualifies a woman as economically disadvantaged (EDWOSB), we urge the Committee to change the definition of net worth. Before a woman is 59 ½, her retirement account/s do not count toward the net worth calculation. SBA regulations state that if the retirement account has early withdrawal penalties, it does not count toward the asset total. However, retirement funds lift those penalties at age 59 ½. Women who are above this age must count retirement funds—often resulting in disqualification for EDWOSB status, putting older female entrepreneurs at a disadvantage. We view this as discriminatory and a restriction that limits EDWOSB participation.

In addition, women-owned and minority-owned companies have in the definition of what constitutes a woman-owned or minority-owned firm a requirement that ownership must be “unconditional,” leading to a lack of investment in these firms. Given the size of contracts, this is a stumbling block that should be removed. Another approach, which is regulatory, is to loosen the restriction of “direct ownership” which prevents ownership by another entity. Section 3(n) of the Small Business Act does not require direct ownership of WOSBs, meaning the SBA could loosen this restriction by regulation, as was done for the HUBZone program.

The last contracting challenge we want to raise is the problem of small business growth. I would like to thank this Committee for passing the “Small Business Runway Extension Act” last

³ The System for Award Management (SAM) is an official website of the U.S. government.

year. Companies are eagerly awaiting its implementation by the SBA. Giving companies the ability to count an average of five years of revenue instead of the current three years to determine size will give them a longer time period to progress from small to midsize businesses. This new law will greatly assist businesses experiencing growth in the federal marketplace. However, many businesses are in limbo while waiting on the SBA to start its rulemaking, including federal agencies that are in the process of structuring contracting vehicles. We urge the Committee to continue pressuring and holding the SBA accountable in order to expedite this process.

When we think about business growth, diversifying into public sector contracting should be an option. Given the complexities and barriers that exist for entry into this market, we believe utilization of the women's procurement program can help women business owners become successful federal contractors. However, we would note that the government has only met its 5% goal of contracting with women once. We urge the Committee to take steps to make this program a priority, thus assisting women in business success.

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