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BEFORE THE SUBCOMMITTEE ON CONTRACTING AND WORK FORCE

OF THE

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

"DEFER NO MORE: THE NEED TO REPEAL THE 3% WITHHOLDING PROVISION"

MAY 24, 2011

I. INTRODUCTION

Chairman Mulvaney, Ranking Member Chu, and members of the subcommittee, thank you for the invitation to participate in today's hearing. My name is Kara M. Sacilotto. I am a partner with the law firm Wiley Rein, LLP, and practice in the firm's government contracts practice group. I also have the privilege of teaching government contracts as an Adjunct Professor at George Mason University School of Law. My testimony today is not provided on behalf of any institution, organization or entity and represents solely my own personal views as a practitioner in the area of government contracting.

I am confident that you have heard and will hear from businesses – both large and small – and industry groups that the three percent withholding on payments from federal, state, and local governments established by Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) is bad for business during already stressful economic times. The law unfairly penalizes honest taxpaying contractors, bears no relationship to ultimate tax liability for those against which payments are withheld, and will be extraordinarily burdensome to administer. I echo these concerns, but in addition to these direct, negative impacts on contractors and governments, Section 511 also will inflict unnecessary burdens and harms on the procurement system itself. Although these impacts are likely felt at the state and local level as well, I will focus on three impacts to the federal procurement system: (1) the undermining of existing policies and programs to foster small business contracting with the federal government; (2) the disincentive Section 511 creates for contractors to do business with the government; and (3) increased costs to contractors and the government and disputes between contractors and procuring agencies as a result of Section 511. I will also discuss existing protections for the government in the procurement system that render the three percent withholding unnecessary in light of its burdens.

II. OVERVIEW OF THE THREE PERCENT WITHHOLDING REQUIREMENT AND IRS IMPLEMENTING RULES

Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222, added section 3402(t) to the Internal Revenue Code (IRC) and, with certain limited exceptions, requires federal, state and local governments (including political subdivisions and instrumentalities with total annual payments in excess of $100,000,000) to deduct and withhold as a tax three percent of *any* payment to *any* person providing property or services to federal, state, and local governments. TIPRA slated the withholding to go into effect for payments made after December 31, 2010. Section 1511 of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, extended the effective date of section 3402(t) to payments made after December 31, 2011. In response to public comments regarding administrative implementation burdens associated with the withholding requirement, the Internal Revenue Service (IRS), which recently issued final rules to implement the withholding requirement, granted contractors and governments an additional one-year extension from the ARRA implementation date.[1] Thus, under the final rule, the withholding will apply to any individual payment of $10,000 or more made after December 31, 2012, subject to an exception for payments made under contracts existing on December 31, 2012, that are not materially modified. This exception may be temporary only, however: on May 9, 2011, the IRS also issued a proposed rule that includes a sunset provision under which the "existing contract" exception would cease to apply to any payments made on any contract on or after January 1, 2014.[2] Thus, if finalized, the withholding will apply to all payments over $10,000 made after

[1] *See* 76 Fed. Reg. 26583 (May 9, 2011).

[2] *See* 76 Fed. Reg. 26678 (May 9, 2011).

January 1, 2014 on any contract, regardless whether the parties contemplated such a withholding when they entered into the contract.

The IRS's delay of implementation of the withholding is a good idea, but the final rules still do not shield taxpaying contractors that meet their legal obligations from the harmful impacts of the rule. For example, public comments requested that the IRS refrain from applying the withholding to industries with low profit margins, if the payee expected that it would not have any income tax liability (if, for example, the contractor anticipated net operating *losses*), or if the taxpayer was current on its taxes. The IRS declined to establish such exceptions in its implementing rules, noting that "differing rates for differing industries or taxpayers are not contemplated by the statute and would raise administrative complexities."[3] Thus, even businesses that anticipate no tax liability or timely pay corporate income taxes will be subject to a three percent withholding.

Commenting parties also requested that the IRS clarify that the withholding would not apply to a variety of payments for work-in-progress, such as contract financing payments, performance-based payments, commercial advance payments, interim payments, progress payments based on cost or percentage of completion, or interim payments on cost-reimbursement contracts. These interim payments are intended to help finance a contractor's ongoing contract performance, and comments argued that withholding portions of the interim payments would detrimentally affect cash flow and increase costs to governments, and that additional withholding was unnecessary where the government already withholds a portion of payment until contract completion. The IRS rejected all of these comments because a more nuanced application of the

[3] 76 Fed. Reg. at 26586-87.

withholding also would add "administrative complexity."[4] According to the IRS, "[t]reating the date the funds are disbursed as the payment date ensures that there will be funds upon which to withhold."[5] Thus, it appears that ensuring that there are funds to withhold is deemed more important than allowing contractors to realize a stable cash flow.

Despite the much-needed additional delay and the finalization of implementation rules, the IRS's rules still leave much regulatory work to be done. Because existing provisions of the Federal Acquisition Regulation (FAR) and its implementing clauses do not reflect this withholding requirement, significant revisions to the FAR will be required in the areas governing contract administration and payments, among others. The IRS took over two years to issue final rules on implementation of Section 511, and a further proposed rulemaking is still outstanding. The additional process of promulgating, commenting upon, and finalizing new FAR rules, incorporating these new rules and clauses in future solicitations, and potentially seeking to add them to existing contracts is an administrative burden on government and contractors that remains outstanding and should be avoided.

III. PROCUREMENT IMPLICATIONS IF THE 3% WITHHOLDING RULE IS NOT REPEALED

A. The Withholding Requirement Impairs Procurement Policies Designed To Promote Opportunities for Small Businesses to Contract with the Federal Government.

Congress and regulators have established numerous programs to assist small businesses with contracting with the federal government. These programs and policies include, among other things:

[4] *Id.* at 26586.

[5] *Id.*

- Small business set-aside contracts, including the requirement that a contracting officer "set aside" for small businesses any contract over $150,000 where there is a reasonable expectation of receiving offers from at least two responsible small businesses and award can be made at a fair and reasonable price;[6]

- The policy expressed in FAR 52.219-8 that "small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns *shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency* . . ." and that federal government prime contractors will carry out the policy to the fullest extent possible in awarding subcontracts and "establish procedures to ensure the timely payment of amounts due" to small business concerns;[7]

- Small business subcontracting requirements, including the requirement in FAR 52.219-9 that a federal prime contractor provide a small business subcontracting plan that addresses, among other things, goals for subcontracting with various small businesses, the dollars planned to be subcontracted, and the types of services and supplies to be subcontracted;

- Specific small business government contracting programs, including the 8(a) Business Development, HUBZone, Service-Disabled Veteran-Owned and Women-Owned Small Business programs;[8]

- Mentor-protégé programs through the Small Business Administration (SBA), the Department of Defense (DoD) and other agencies; and

- The Small Business Innovation Research (SBIR) program as well as small business loans from the SBA;

- Policies to strengthen the ability of small businesses to compete for federal contracts included in the Small Business Jobs Act of 2010, Pub. L. No. 111-240; and

- Administration efforts, as part of the U.S. Chief Information Officer's December 2010 25-point plan to reform federal information technology management, to reduce existing barriers to entry for small, innovative businesses.[9]

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[6] FAR 19.502-2(b).

[7] FAR 52.219-8 (emphasis added).

[8] 13 C.F.R. Parts 124 – 127.

[9] Vivek Kundra, U.S. Chief Information Officer, "25 Point Implementation Plan to Reform Federal Information Technology Management at 20 (Dec. 9, 2010), available at: http://www.cio.gov/documents/25-Point-Implementation-Plan-to-Reform-Federal%20IT.pdf.

Section 511 of TIPRA undermines all of these governmental policies designed to assist small and small disadvantaged business with contracting with the federal government. The SBA Office of Advocacy, established by Congress to advocate and represent the views of small business before federal agencies and Congress, has spoken out bluntly against Section 511 and its harmful effect on all small businesses:

> The three percent withholding requirement will adversely impact all small businesses that provide services to Government entities. Most small businesses that provide services to Government entities will have to increase their debt level in order to ensure sufficient cash flows and will be forced to pass these added additional expenses on to their Government customers. The three percent withholding requirement will force many other small firms that are unable to secure additional debt out of the Federal contracting business.[10]

In commenting on the IRS's implementation rules, the Department of Veteran Affairs expressed similar concerns regarding the impact of the withholding on small businesses with which it contracts:

> VA contracts with many small, minority-owned, and veteran-owned businesses and withholding three percent from their payments will significantly reduce cash flows. Complying with the proposed regulations may force these companies to alter their business models or pricing schemes, or to stop doing business with VA and the Federal Government.[11]

The Department of Housing and Urban Development (HUD) also noted the adverse impact on small businesses and the likely negative impact on HUD's ability to contract with small businesses:

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[10] Comments of the SBA Office of Advocacy on Notice 2008-38, "Government Entities Required to Withhold Three Percent on Payments for Services and Property," at 1 (Apr. 24, 2008); *see also* SBA Office of Advocacy Press Release "Chief Counsel Applauds IRS Postponement of Three Percent Withholding Tax on Contractors," available at: http://www.sba.gov/content/chief-counsel-applauds-irs-postponement-three-percent-withholding-tax-contractors.

[11] Department of Veteran Affairs, Comments on the Proposed Regulations concerning Withholding Under Internal Revenue Code Section 3402(t) (Mar. 3, 2009).

> The majority of small businesses that contract with the federal government are under the $23 million size limitation and a good portion of theses companies are under the $6 million size limitation. This regulation will undoubtedly increase the overhead of many small businesses through having to enhance their internal accounting (financial and project) software to account for and report withheld amounts. The increased overhead cost may force small businesses to increase their contract pricing to cover those costs. Also, the 3 percent withholding, albeit small, could account for half their profit margin, creating a hardship due to cash flow demands.
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> The impact on small businesses may potentially result in good vendors choosing to not participate in HUD's contracting opportunities. This would have the net effect of reducing HUD's available pool of small businesses capable of receiving HUD contracts, which is contrary to the Department's stated policy of providing maximum practicable opportunities in HUD's acquisitions to small businesses. Reduced competition for HUD's contracts may well increase contract pricing.[12]

Although nothing in the withholding law exempts any contractor – large or small – from having to pay its suppliers and vendors, the impact on small businesses will be particularly acute for all of the reasons these agencies and small businesses themselves have identified. In recognition that small businesses have more vulnerable cash flow issues, the FAR includes accommodations for small business concerns. For example, although the customary progress payment rate for large businesses is 80 percent of the total costs of performing the contract, small businesses may receive 85 percent as part of their progress payments.[13] The DoD FAR Supplement (DFARS) includes additional policies to assist small businesses. Although the standard progress payment for large businesses under DoD contracts is the same 80 percent the

[12] HUD Response to IRS on 26 CFR Part 31 Section 3402(t) Known as Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (Mar. 5, 2009).

[13] *See, e.g.*, FAR 32.501-1.

FAR provides, small businesses receive progress payments at a 90 percent rate, and small, disadvantaged businesses are paid at a 95 percent rate.[14] DoD also has adopted a policy to pay small businesses as quickly as possible after invoices are received and before the normal due date for payment.[15] On April 27, 2011, DoD issued a class deviation to foster these accelerated payments to small businesses.[16] A withholding of three percent of payments as applied to small businesses is inconsistent with these policies and initiatives and reduces the benefits of prompt payments and increased progress payments.

None of these programs or policies can function properly if small businesses are otherwise discouraged from contracting with the government because they cannot generate the revenues or cash flow to meet their expense obligations. As the SBA Office of Advocacy, Department of Veterans Affairs, HUD and others have noted, because contractors' reduced cash flow must be replaced, if even possible, with additional interest expense on borrowing or reduced margins, Section 511 may drive small businesses from the federal market, even when the government has other policies designed to encourage their participation.

B. The Withholding Requirement Is A Disincentive to Commercial Item Contractors.

Although some companies may reluctantly accept providing, in essence, an interest-free loan to the government as a condition of doing business, a blanket three percent withholding on payments also will almost certainly discourage new companies from doing business with the federal government, particularly those companies that have been hesitant to enter the federal

[14] DFARS 232.501-1.

[15] *See* Interim Rule, 76 Fed. Reg. 23505 (Apr. 27, 2011) (amending DFARS to accelerate payments to all small businesses, not only small disadvantaged businesses).

[16] Memorandum 2011-O0007, "Class Deviation – Requirement for Accelerated Payments to Small Businesses (Apr. 27, 2011), available at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001787-11-DPAP.pdf.

marketplace. Specifically, in addition to impacting negatively policies and programs intended to promote small business participation in contracting, the three percent withholding will likely disproportionately dissuade commercial item contractors, including small businesses that offer high tech products that might be available on the commercial market, from selling to or entering the government market, despite government efforts to encourage their participation. Commercial item vendors, in particular, have little incentive to finance the government's operations with their revenues, especially if they are able to operate profitably in a commercial sector that does not exact that toll.

Congress has enacted laws intended to encourage companies that sell commercial items and commercial off-the-shelf items, both defined in the FAR, to sell their products to the government on terms and conditions, including pricing, that reflect the commercial market.[17] The Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, states a preference for government acquisition of commercial items based on the determination that these products can save the government research and development costs, minimize acquisition lead-time, and reduce the need for detailed product design and testing.[18] Another goal of commercial item contracting is to allow government to reap the benefits of commercial prices. Indeed, this is one of the objectives of the General Services Administration (GSA) schedule program.

To make contracting with the government more attractive to commercial item vendors, various regulatory requirements do not apply to commercial item contracts, such as compliance with the government's Cost Accounting Standards and the requirement to provide detailed cost and pricing information under the Truth in Negotiations Act, among others. The FAR also

[17] *See* FAR 2.101. This provision defines both a "commercial item" and "commercial off-the-shelf" items.

[18] S. Rep. No. 103-258 at 5 (1994).

provides a streamlined version of contract provisions for commercial item contracts intended, to the extent possible, to mirror commercial practices.[19] The National Defense Authorization Act of 2008, Pub. L. No. 110-181, also directed DoD to develop a plan to minimize the number of "government-unique" clauses in commercial item contracts.[20]

Just as the efforts to promote small business participation in federal contracting will be undermined by Section 511, so too will efforts to encourage commercial item contractors to enter and stay in the federal market. Even with laws and regulations designed to ease the burden for acquisition professionals and commercial item vendors to contract for commercial items, contracting with the government still comes with "bureaucratic strings." Over time, these "strings" have increased, slowly chipping away at the notion that commercial item contracting in the federal sector should mirror the commercial sector. Recent examples of additional regulatory burdens applied to commercial item contractors who deal with the government (but not imposed in the commercial market) include the requirement to disclose, under certain circumstances, executive compensation of the commercial item vendor and even its first-tier subcontractors,[21] to make updates to information in the Federal Awardee Performance and Integrity System (FAPIIS) database, much of which will be disclosed publicly,[22] and mandatory disclosure to agency inspector generals of credible evidence of violations of certain criminal laws, the civil False Claims Act, and overpayments by the government.[23]

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[19] FAR 51.212-4.

[20] Pub. L. No. 110-181, § 821.

[21] FAR 52.204-10.

[22] *See* 75 Fed. Reg. 14059, 14063 (Mar. 23, 2010); FAR 12.301(d)(3)-(4).

[23] 73 Fed. Reg. 67064 (Nov. 12, 2008); FAR 52.203-13(b)(3).

The three percent withholding, and the costs of complying with and administering it, is yet another added cost of doing business with the federal government that exists nowhere in the commercial marketplace. Given a choice of customers, it is reasonable to believe that vendors of commercial items will forego the additional penalty of a three percent withholding that comes with contracting with the government, reducing competition for acquisitions of commercial items and depriving government of innovative, commercial products. Moreover, the government may now find that it must pay a premium for commercial items, since the costs of dealing with the government no longer reflect the costs of the commercial marketplace.

C. The Withholding Requirement Will Likely Result in Higher Costs for the Government and Disputes Between Contractors and the Government.

Putting aside that contractors whose contracts incorporate the withholding requirement will likely pass on to the government the costs of administering and obtaining additional financing as a result of the withholding, the withholding imposes even more potential costs in terms of disputes between agencies and contractors.

As discussed above, the IRS's final implementing rules exempt contracts existing as of December 31, 2012, unless the contract is "materially modified."[24] A "material modification" is defined in the IRS rules as "a modification that materially affects the property or services to be provided under the contract, the terms of payment for the property or services under the contract, or the amount payable for the property or services under the contract."[25] It does not include "a mere renewal of a contract that does not otherwise materially affect" the property and services provided, terms of payment, or payment amount.[26] It also does not include a modification to a

[24] 26 C.F.R. § 31.3402(t)-1(d)(2).

[25] *Id.*

[26] *Id.*

contract required by applicable federal and state law.[27] Because, as discussed below, most government contracts allow the government to make changes to the contract, changes to the property or services provided under a contract – and an adjustment to the contract price if the contractor's costs of performance are impacted – are not uncommon. If allowed to go into effect, this "material modification" qualification will foreseeably lead to extensive disputes regarding what changes constitute a "material" modification.

In addition, the IRS has proposed a rule that would apply the three percent withholding to all payments under any procurement contract, *including* those in effect on December 31, 2012, starting with payments in January 2014. There are no FAR rules that implement the withholding requirement at this time. Nevertheless, changes to the FAR generally apply only to solicitations (and therefore contracts) issued *after* the effective date of the FAR change.[28]

Plainly, any attempt to impose a three percent withholding on all contracts entered into *prior to* the effective date of Section 511 will lead to disputes regarding the government's authority to modify the parties' contractual bargain and, at a minimum, will expose the government to claims for compensation. Government contracts, not surprisingly, include clauses governing payments. Some clauses provide for payment upon completion or partial delivery of supplies; others, as discussed above, provide for payments to the contractor as work progresses.[29] With respect to progress payments, clauses may provide for payment on the basis of the costs incurred as work progress or based upon a percentage of work completed or the stage of contract completion. None of these payment clauses, however, incorporates a three percent withholding

[27] *Id.*

[28] FAR 1.108(d)(1).

[29] *See, e.g.*, FAR 52.232-1 (standard payment clause for accepted delivery of supplies or services and accepted partial deliveries); FAR 52.232-16 (progress payments).

on payments for income taxes. The standard commercial item contract terms included in the FAR similarly provide that payment must be made upon government acceptance and in accordance with the Prompt Payment Act.[30] Unlike some terms of FAR 52.212-4 that can be tailored by the parties, the payment clause cannot, except to implement electronic funds transfer under FAR subpart 32.11.[31]

Government contracts also include a Changes clause that allows the contracting officer to make changes within the general scope of the contract. With respect to fixed-price contracts for supplies, for example, the contracting officer can make changes to (1) drawings, designs, or specifications when supplies are provided according to government specifications; (2) the method of shipping or packing; and (3) the place of delivery.[32] For service contracts, the contracting officer may make changes to (1) the description of services to be performed; (2) the time of performance, such as the days of the week or hours of the day; and (3) the place the services are performed.[33] For commercial item contracts, changes in the terms and conditions of the contract can be made only be mutual written agreement of the parties.[34] None of these provisions permits the government to modify an existing contract to withhold, unilaterally, payments to a contractor. Moreover, even when these provisions *do* apply, the contractor is entitled to an equitable adjustment in the contract price to compensate it for the costs of the change.[35] In short, the government is not entitled to make a change to the contract that affects

[30] FAR 52.212-4(i).

[31] FAR 12.302(b).

[32] FAR 52.243-1(a).

[33] FAR 52.243-1(a), Alt. I.

[34] FAR 52.212-4(c).

[35] FAR 52.243-1(b); FAR 52.243-1(b), Alt. I.

the contractor's costs for *free*. For those contracts that were entered into prior to enactment of TIPRA or the effective date of Section 511, the government cannot simply impose a three percent withholding without compensation to the contractor.[36]

Beyond the myriad disputes that will foreseeably arise attempting to enforce and implement Section 511, it is also likely that disputes will arise in reconciling withholdings under the statute. To the extent the IRS has described the processes for corrections to over-withholdings and under-withholdings, they are complex and do not appear to cover all the issues that will likely arise. In particular, it is not entirely clear how contracting officers and contractors will "true up" the amounts withheld to determine whether the government has over or under-collected its taxes. Beyond the attempts to impose this withholding on existing contracts, the simple mechanics of dealing with this new process are likely to generate disputes.

The Supreme Court has recognized that the government has a "long-run interest as a reliable contracting partner."[37] Section 511 disrupts this "long-run interest" considerably. Because neither the FAR nor other areas of the law allows the government to enact laws that "undo" the bargains struck with contracting partners without contractual repercussions, Section 511 will inevitably generate a host of disputes and additional costs under existing contracts.

D. The Procurement System Already Provides The Government Tools to Protect Itself from Contracting with Delinquent Contractors.

Finally, to the extent TIPRA is intended to protect the government from delinquent taxpaying contractors, other laws already exist to target contractors who are delinquent on taxes and to protect the federal government from doing business with tax-delinquent contractors

[36] FAR 1.108(d)(3) ("Contracting officers may, in their discretion, include the changes in an existing contract *with appropriate consideration*") (emphasis added).

[37] *United States v. Winstar Corp.*, 518 U.S. 839, 843 (1996) (Souter, J., for the plurality).

without needlessly and unfairly burdening contractors who abide by their legal obligations. Beyond existing Treasury Department enforcement tools, the procurement system also has mechanisms to incentivize contractors to meet their tax obligations and to protect the government from those that do not. Federal law requires that only contractors who are "responsible" can be awarded contracts, and the contracting officer is required to make an affirmative determination of the contractor's responsibility prior to awarding a contract.[38] Two aspects of this determination include evaluation of the contractor's financial resources and record of integrity and business ethics.[39] To assist contracting officer's in making a responsibility determination, FAR 52.209-5 requires contractors submitting proposals for federal contracts to make various certifications regarding their "present responsibility." On April 22, 2008, this FAR provision was amended, effective May 22, 2008, to require contractors submitting proposals for federal procurement contracts to certify whether "within a three-year period preceding this offer," the contractor has or has not "been notified of any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied."[40] A similar provision applies to solicitations for the acquisition of commercial items.[41] At the same time, the FAR was amended to provide that a contractor can be suspended or debarred from contracting with the government entirely for being delinquent in federal taxes in an amount over $3,000.[42]

In addition, on January 20, 2010, the White House issued a memorandum requiring the IRS to review contractor certifications regarding non-delinquency in taxes under FAR 52.290-5

[38] FAR 9.103.

[39] FAR 9.104-1(a), (d).

[40] FAR 52.209-5(a)(1)(i)(D).

[41] FAR 52.212-3.

[42] FAR 9.406-2(b)(v).

and 52.212-3.[43] The Memorandum also requires the Office of Management and Budget to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of tax delinquencies and to provide recommendations on process improvements to ensure that these delinquent contractors are not awarded federal contracts and to make contractor certifications available in a government-wide database.[44]

With respect to this final recommendation, Section 872 of the National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, required GSA to create a database containing specific information on government contractors' integrity and performance – the FAPIIS database previously referenced. Currently, FAPIIS includes information on civil, criminal and administrative findings of liability and penalties over $5,000, and serves as a "one-stop" shop for contracting officers to find information on whether a prospective contractor is "presently responsible" and thereby eligible to receive a federal contract. Regulators have also explored expanding FAPIIS to include information regarding state contracts and other proceedings.[45]

As a result of these provisions, contractors today have a strong incentive to pay their taxes to receive future contracts awards and avoid the contractual "death sentence" of suspension or debarment that would preclude them from participating in federal contracting. Because contractors may face civil or even criminal liability under the False Claims Act for knowingly false certifications, they also have a strong incentive to answer these certifications truthfully.

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[43] *See* White House, Office of the Press Secretary, Memorandum for the Heads of Executive Departments and Agencies (Jan. 10, 2010), available at: http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-1.

[44] *Id.*

[45] *See, e.g.*, 75 Fed. Reg. 14059, 14060 (Mar. 23, 2010) (FAR Councils exploring inclusion of information on performance of state government contracts and other violations of law not only in the context of federal contracts and grants).

Moreover, the government already has the tools necessary to identify contractors who are delinquent on the taxes and ensure that the government does not contract with these contractors. Given the tools already available to target delinquent contractors, Congress should repeal Section 511 and avoid the significant burdens and negative impacts of an across-the-board withholding on government and tax-paying contractors.

IV. CONCLUSION

Chairman Mulvaney and members of the Subcommittee, although the delays to implementation of Section 511 of TIPRA are welcomed, the federal procurement system, like commercial markets, favors stability. I urge you to take action to repeal Section 511 of TIPRA now before the negative consequences I have discussed are unnecessarily inflicted on the procurement system. Thank you again for this opportunity to share my views.