

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

**MEMORANDUM**

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**TO:** Members, Small Business Committee  
**FROM:** Nydia M. Velázquez, Chairwoman  
**DATE:** June 14, 2022  
**RE:** Hybrid Hearing: “Are Governmentwide Contracts Helping or Hurting Small Contractors?”

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The Committee on Small Business will meet for a hybrid hearing titled “Are Governmentwide Contracts Helping or Hurting Small Contractors?” The hearing is scheduled to begin at **10:00 A.M. on Tuesday, June 14, 2022, in person in 2360 Rayburn House Office Building and via the Zoom platform.**

The hearing will examine governmentwide contracts, including the Best-In-Class (BICs) contracts that originate from the Category Management initiative, and assess their impact on the federal small business base. Members will also have the opportunity to explore potential solutions to reduce the barriers to entry for small businesses on these contracting vehicles.

**Panel**

- Ms. Amber Hart, Co-founder and Co-owner, The Pulse of GovCon, LLC, Sterling, VA
- Mr. Isaias “Cy” Alba IV, Partner, PilieroMazza, PLLC, Washington, DC
- Ms. Ms. Lynn Ann Casey, Founder and CEO, Arc Aspicio, Washington, DC
- Ms. Rebecca Askew, CEO & General Counsel, Circuit Media LLC, Denver, CO

**Background**

From 2010 to 2019, the number of small businesses providing common goods and services to the federal government shrank by 38%.<sup>1</sup> At the heart of this decrease is the Category Management initiative, which furthers the practice of buying common goods and services governmentwide in order to improve the federal government’s acquisition activities. From the time the initiative was first implemented in 2016 to 2019, the number of small businesses providing common goods and services decreased by 17%.<sup>2</sup> Despite the reduction, the Federal government continues to meet its small business goals because more dollars are being awarded to a smaller pool of small businesses.

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<sup>1</sup> Gov’t Accountability Off., GAO-21-40, *Federal Buying Power: OMB Can Further Advance Category Management Initiative by Focusing on Requirements, Data and Training* (Nov 2020). (Hereinafter “GAO-21-40”)

<sup>2</sup> *Id.*

The purpose of Category Management is to eliminate redundancies, increase efficiencies, and deliver savings by making agencies buy common goods and services as a single enterprise.<sup>3</sup> It relies on a tier model where spending in tiers 1-3 is considered as “managed” and tier 0 is not. Governmentwide contracts, including ones designated by the Office of Management and Budget (OMB) as Best-In-Class, are at the highest levels of the tier (tier 2 and tier 3, respectively) and therefore preferred contracting vehicles. Under the initiative, agencies are required to direct their spending to tiers 1-3 and, in particular, to increase their spending in BICs (tier 3).<sup>4</sup> In practice, the method by which Category Management achieves buying “as one” is by consolidating all requirements into a limited number of governmentwide contracts. As a result, there are fewer requirements being directly awarded by agencies through stand-alone contracts (usually considered as tier 0).

“Governmentwide contracts” is a broad term used to describe contracts that are established by an agency for government-wide use.<sup>5</sup> They are commonly structured as indefinite delivery, indefinite quantity contracts where one agency awards the master contract and others simply place task or delivery orders against it. Currently, there are 38 governmentwide contracts designated as Best-In-Class, some of which are mandatory.<sup>6</sup> This list includes contracts such as: “OASIS” and “OASIS Small Business” (for professional services); “NASA SEWP,” “8(a) STARS III,” “Alliant 2,” “VETS 2,” “CIO SP3 Small Business” and “CIO SP3 Unrestricted” (for information technology); and “HCaTS” (for Human Capital).

### **Benefits and Challenges of Governmentwide Contracts**

There are two main benefits of governmentwide contracts for small businesses. First, they can be extremely profitable for those small businesses mature enough to navigate this space or that engage in teaming arrangements. Second, they can slightly prolong the status of a business as small or within a socioeconomic designation because governmentwide contracts tend to last many years and once said status is determined at the time of the initial offer, the business will typically not be required to recertify until 5 years have passed, or a contracting officer requires recertification for a particular order.<sup>7</sup> However, the challenges seem to outweigh the benefits. Below is a summary of the main challenges.

### **Magnitude of Requirements and Contract Terms**

There are many challenges associated with governmentwide contracts and BICs. In 2020, the Government Accountability Office (GAO) issued a report detailing some of these barriers to entry. In particular, it noted that governmentwide contracts and BICs, are structured to assist multiple

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<sup>3</sup> Off. of Mgmt and Budget, *Memorandum for the Heads of Executive Departments and Agencies: Category Management: Making Smarter Use of Common Contract Solutions and Practices*, OMB Memorandum M-19-13 (Mar. 20, 2019) (hereinafter *OMB Memo M-19-13*).

<sup>4</sup> *Id.*

<sup>5</sup> The term “governmentwide contracts” is used in *OMB Memo M-19-13*. According to the memo, it is generally used to refer to Government-wide acquisition contracts for IT, multi-agency contracts for IT, and Government-wide and multi-agency contracts for other than IT.

<sup>6</sup> Gen. Services Admin., *Current Best-In-Class (BIC) Solutions by Category* (May 2022), available at: <https://hallways.cap.gsa.gov/app/#/gateway/category-management/22576/list-of-best-in-class-solutions%3Ftid=9371?tid=9371>

<sup>7</sup> 13 C.F.R. §121.404

agencies and therefore require businesses to provide a larger range of products and services.<sup>8</sup> Additionally, these contracts require small businesses to have numerous certifications in place, some of which take years to obtain and require a substantial investment.<sup>9</sup>

A small business may be completely capable of providing the product or service it sets itself to deliver and may do so with exceptional ratings. Yet, many businesses cannot scale to provide the catalogue of products and services or quickly obtain all the certifications these governmentwide contracts require. Some of the things required may not even be within the control of the small business like for example, facility clearances. As a result, some small businesses are left with no choice but to exit the federal marketplace.

#### *Duration and Limited Opportunities to Enter these Vehicles*

According to GAO, small businesses also expressed concerns with the limited clarity or notice for when a BIC will be awarded or when BICs will offer “on-ramp” opportunities.<sup>10</sup> “On-ramp” opportunities allow businesses to get into the BIC vehicle after initially awarded. They are essential because some governmentwide contracts and BICs can last as much as 10 years. Thus, if a small business competes but is not awarded a BIC when it was originally established and given that practically all contracting opportunities are being moved to these vehicles, the small business will be essentially locked out for multiple years. Additionally, these contracts tend to have billion-dollar ceilings. Thus, the combination of long term and high stakes leads in many instances to more protests.<sup>11</sup>

#### *High Costs*

Governmentwide contracts require more upfront costs and staff resources, which may be risky for small businesses because they may not recoup the investment if they don’t win the award.<sup>12</sup> In fact, even if the small business is ultimately awarded the master contract, there is no guarantee that they will ever receive a task or delivery order, which puts them in the same precarious position. Additionally, some of these contracts take years to award or never come to fruition. Take for example the case of “Alliant 2 Small Business.” Four years after the solicitation was issued, and numerous protests were filed, the procurement was ultimately cancelled.<sup>13</sup> The Committee has heard from small business that have invested thousands of dollars to bid in this vehicle and it never materialized.

#### *Concerns with the Self-Scoring Evaluation Process*

Since the “OASIS” solicitation in 2013, agencies have been using a self-scoring evaluation process as a source selection technique for many of these governmentwide contracts. In this self-scoring

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<sup>8</sup> GAO-21-40, *supra*, note 1.

<sup>9</sup> GAO-21-40, *supra*, note 1.

<sup>10</sup> GAO-21-40, *supra*, note 1.

<sup>11</sup> Daniel Wilson, *Protests Highlight Systemic Issues With Gov’t-Wide Contracts*, Law 360 (May 27, 2022, 8:03 PM), <https://www.law360.com/articles/1497781/protests-highlight-systemic-issues-with-gov-t-wide-contracts>

<sup>12</sup> GAO-21-40, *supra*, note 1.

<sup>13</sup> Jason Miller, *Cancellation of Alliant 2 Small Business Caps a Rough Few Months for Small Businesses*, Federal News Network (July 8, 2020, 7:50 AM), <https://federalnewsnetwork.com/reporters-notebook-jason-miller/2020/07/cancellation-of-alliant-2-small-business-caps-a-rough-few-months-for-small-firms/>

process, offerors assign themselves points based on the scoring criteria chosen by the agency. Then, the top-scoring offerors are chosen for a predetermined number of slots.<sup>14</sup>

In a self-scoring process, the focus is on experience and past performance, aiming to put together the most qualified pools of contractors.<sup>15</sup> Some of the benefits of this method for the government are that agencies, which everyday count with less acquisition personnel, do not have to read hundreds of proposals. In addition, it is arguably less prone to protests because it is supposed to be based on objective criteria.<sup>16</sup>

However, startups and small businesses with limited experience or past performance have no real chance of receiving an award when self-scoring methods are used.<sup>17</sup> Moreover, it forces businesses to do anything imaginable to maximize their scores, including entering into teaming arrangements to rack up points and not everyone is interested in teaming.<sup>18</sup> Another challenge with self-scoring methods is that they are disconnected from how successful the contractor would be at performing the work. The self-scoring process essentially constitutes a plethora of checkboxes with which contractors must comply and have no meaningful relationship to how the work is going to be performed.<sup>19</sup> Finally, there tends to be inconsistencies between what agencies put out in draft solicitations, which is what companies use to team-up and shape their proposals, and the actual solicitation.<sup>20</sup> Any last-minute changes to the solicitation can truly set businesses back and even make them lose the investment already made.

Ironically, self-scoring evaluation processes are often the subject of protests, both of pre-award protests challenging the scoring criteria and post-award protests questioning the points an awardee had.<sup>21</sup>

### *Mentor Protégé Joint Ventures*

The use of self-scoring evaluation processes requires businesses to be the biggest players in their industry or to join forces with other businesses through teaming arrangements to pursue these governmentwide contracts. As a result, mentor-protégé agreements are on the rise. There are currently 1,565 active mentor-protégé agreements, 472 more than just 2 years ago.<sup>22</sup>

Under a mentor-protégé agreement, a small business can create a joint venture with its mentor (which can be another small business or a large business) to perform contracts.<sup>23</sup> The joint venture inherits the qualifications of both members, including the past performance and experience of the mentor as well as the designations the protégé has, such as being small or having a socioeconomic

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<sup>14</sup> Wilson, *supra*, note 11.

<sup>15</sup> Ab Van, *Is Your Company Ready for the Prime-Time of Self Scoring Contracts*, Washington Technology (May 15, 2020), <https://washingtontechnology.com/opinion/2020/05/is-your-company-ready-for-the-prime-time-of-self-scoring-contracts/354662/>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Wilson, *supra*, note 11.

<sup>19</sup> Wilson, *supra*, note 11.

<sup>20</sup> Wilson, *supra*, note 11.

<sup>21</sup> Wilson, *supra*, note 11.

<sup>22</sup> Small Bus. Admin., *Active Mentor Protégé Agreements*, <https://www.sba.gov/document/support-active-mentor-protége-agreements>.

<sup>23</sup> 13 C.F.R. §125.9

designation (WOSB, SDVOSB, 8(a) and HUBZone).<sup>24</sup> Thus, they are often being used to pursue BICs that are solely for small businesses (set-aside BICs).

Yet, there are many concerns with the use of mentor-protégé joint ventures. The Committee has repeatedly heard concerns from small businesses who argue that they are essentially being forced to compete against large firms in governmentwide contracts and BICs that are supposed to be set asides. This can be further aggravated if the solicitation doesn't have restrictions as to the amount of experience and past performance a joint venture can leverage from its mentor, or if it does not require protégés to bring experience and past performance of their own. Moreover, these joint ventures are allowing large businesses to tap into small business contracts that were previously inaccessible to them. It also has repercussions in terms of the Small Business Scorecard because under a joint venture the small business must perform at least 40% of the work, which still leaves a substantial amount of work and of the profits for the large firm.<sup>25</sup> Thus, it begs the question: should agencies be receiving small business credit for contract dollars that are, for the most part, being funneled to large businesses?

#### *Duplication or Need for Specific Focus Areas*

It has also been highlighted that in trying to cater to a vast array of agencies, some of these governmentwide contracts and BICs are incredibly broad. Take for example the case of CIO-SP3, which is supposed to be for health IT sector, yet its scope is much broader, allowing agencies to issue task orders that have nothing to do with public or health management concerns.<sup>26</sup> Moreover, there is a substantial duplication between some of these BICs in terms of their scope and no real differentiator in terms of awardees, which generates an intense industry response to be in as many of these vehicles as possible.<sup>27</sup>

#### **Conclusion**

Governmentwide contracts and BICs have dramatically changed the way the federal government does business with small contractors. Not only have they forced small businesses out of the federal marketplace, but they have impeded new entrants, who everyday have less meaningful ways to contract with the government unless they engage in teaming arrangements. Additionally, they prioritize entities that for the most part are anything but small for contracts that are supposed to be set asides. It's time to change this paradigm with meaningful reforms. Expanding the Federal acquisition workforce, allowing for more stand-alone contract opportunities, prioritizing mentor protégé joint ventures between small businesses and even creating entry-level governmentwide contracts for truly small firms outside of mentor protégé joint ventures are all things to consider if the government wants to create a robust small business base, create jobs, and drive innovation.

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<sup>24</sup> Hillary Sutton, *Five Questions About the Mentor-Protégé Program with GCP's John Shoraka*, GovContractsPros (May 9, 2022), <https://govcontractpros.com/5-questions-about-the-mentor-protege-program-with-gcps-john-shoraka/>

<sup>25</sup> 13 C.F.R. §125.8

<sup>26</sup> Makpar, *In the Wake of the Polaris Pause: Are GWACs the Best Way to Help Government?*, <https://www.makpar.com/blog/in-the-wake-of-the-polaris-pause-are-gwacs-the-best-way-to-help-government-opinion>

<sup>27</sup> *Id.*