Testimony of

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Subcommittee on Contracting and Infrastructure

"The 8(a) Program: Overview and Next Steps to Promote Small Business Success"

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Chair Mfume, Ranking Member Salazar, and Members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Arshdeep Khurana, and I am the President and CEO of AVOSYS Technology, headquartered in San Antonio, Texas.

AVOSYS provides Enterprise IT support, Information Assurance, Software and Data Engineering, Healthcare IT, Healthcare staffing and Biomedical R&D Support Services to federal government clients. Established in 1998, I have grown the company from a one-man operation, to currently servicing over 50 commercial and government contracts with employees in fourteen states. AVOSYS has achieved industry leading certifications such as CMMI Level 3, ISO 9001 and 27001 certifications, and Joint HealthCare Staffing Gold seal certification.

When I immigrated to United States, I was in pursuit of higher education and the American dream of becoming an entrepreneur. For over a decade, I serviced small and midsize businesses as a trusted Chief Information Office (CIO). After naturalization, I started my business from my apartment with a single dial-up internet connection and a server. Leveraging university computer labs, I was able to experiment with technologies to create AVOSYS' portfolio of product and service offerings.

My business was 100% commercial when I was accepted into the Small Business Administration's (SBA) 8(a) program in 2011. Through the program, my company has been able to grow and become highly successful in the federal marketplace. I am particularly proud of the $48 million competitive contract I was awarded to provide Clinical Healthcare Support Services to the Air Force base clinic to service our men and women in uniform. It is an incredible honor to provide these services, and my company wouldn't be where it is today without the 8(a) program.

The past two years have been difficult for small businesses, and 8(a) firms are no exception. Marketing to customers became exceedingly difficult, and many contracting officers became less approachable during the pandemic. I was thrilled when this Committee added an extra year to the 8(a) program as part of the pandemic response.

This lifeline helped companies like mine save jobs and stay afloat. Some of my contracts ended or were temporarily extended during the pandemic, and I was able to recompete on opportunities I otherwise would not have had access to. For example, we were able to bid on the recompete of our Clinical Healthcare Services contract. If awarded, this opportunity would be a win for my small business, the government, and our 70+ clinical healthcare employees, which was made possible by the 1 year 8(a) program extension granted in 2020. While this extension was incredibly impactful, the pandemic has unfortunately impacted operations for not just one, but two years. Recovery did not truly begin until the current fiscal quarter, leaving many 8(a) companies approaching graduation without feeling like they had their full time in the program. For companies like mine to truly succeed, adding an additional year extension would make all the difference. This would allow for graduating 8(a) firms to get their fair chance to bid on large government wide contract vehicles, including the Defense Health Agency's NextGen Q-Code Medical Services contract and the General Services Administration's (GSA) new Services Multi-Agency Contract (MAC). Many large contracts were impacted by the pandemic, pushing back timelines on opportunities that graduating 8(a)s will not be able to bid on unless the additional year is granted. I recommend the Committee allow for an additional one-year extension for 8(a) firms, if they were part of the 8(a) program (active or on temporary pandemic suspension) as of September 9, 2021, for a full year, regardless of the firm's graduation date. This levels the playing field for these graduating firms that happened to have a graduation date during the extension year, ensuring they can take advantage of a full year extension. Given the increasingly complex and competitive procurement environment, I suggest Congress extends the 8(a) program length to 10 years permanently instead of the current 9 years.

All small businesses, including 8(a) firms, have faced challenges in federal procurement with the greater implementation of category management governmentwide. I applaud the Administration's efforts to encourage agencies to balance this policy with meeting small business goals, especially for small, disadvantaged businesses (SDBs). As the government moves away from direct contracts with businesses, opportunities decrease for smaller businesses. The large buying contracts used in category management require substantial resources to bid and substantial resources to win task orders. Contract requirements have been increasingly structured to keep small businesses out – including stringent past performance or other requirements that are impossible for a small business to meet, especially those who are new to the federal market. Agencies are also moving work out of the 8(a) program to larger non-8(a), agency specific vehicles that they are mandated to use, lessening the ability for 8(a) firms to compete for work. For example, instead of using existing GSA vehicles to award work to small businesses, the Air Force has been using Network-Centric Solutions (NetCents) and its follow-on vehicles. Of the 400 proposals submitted by small businesses on NetCents-2, only 20 were awarded slots on this vehicle. Therefore, a huge portion businesses that are willing and able to compete have been shut out of these opportunities. Over my past 9 years in the program, I have seen numerous 8(a) contract follow-ons moved out of the program to larger non-8(a) vehicles because of high-level agency policies. To remedy this decrease, I suggest that once an 8(a) requirement is set at an agency, it either remains an 8(a) requirement or the agency is required to put equal 8(a) dollars through work in the same or related NAICS code if it is taken out of the program. Further, SBA needs to have a way to measure how the requirements are moving, allowing the Business Opportunity Specialist (BOS) and Procurement Center Representative (PCR) to be engaged in the process.

The decline in number of 8(a) firms has caused concern across the program. According to SBA, as of August 19, 2021, there were 4,906 program participants. In 2010, there were roughly 7,000.[1] One of the consequences of this decline is that fewer firms are entering the 8(a) program, questioning its usefulness. I believe this is happening for a number of reasons and suggest the following changes to the 8(a) program in order to increase the number of successful participants and dollars flowing to SDBs.

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[1]Office of Inspector General, Small Business Administration. "SBA'S 8(a) Business Development Program Eligibility." *Sba.gov*, 2016, https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Limits on sole source awards to individually owned 8(a), Historically Underutilized Business Zones (HUBZone), service-disabled veteran-owned (SDVOSB) and women-owned small businesses (WOSB) have also contributed to this decline. Currently, sole source awards to these socio-economic groups can only be awarded a total of $4.5/$7.5 million (manufacturing) over the life of the contract. For a 5-year contract, that equates to less than $1 million a year. Given the size of a typical government contract which far exceeds this amount, the justification required to award a sole source through these programs requires more time and effort than contracting officers can devote to making these small awards. Thus, dollars are falling away from small businesses and are increasingly awarded through larger contract vehicles and vendors. According to the Government Accountability Office (GAO), the number of 8(a) sole source contracts over $20 million awarded by the Department of Defense (DoD) dropped more than 86% from 2011 to 2016.[2] There are countless examples of small businesses missing out on sole source awards because the contract awards exceed the current sole source thresholds. I suggest this Committee increase the sole source thresholds for individual 8(a), SDVOSB, HUBZone and WOSBs as you did in the 116th Congress through H.R. 190 – by eliminating option years and allowing the amount of $4.5/$7.5 million each year. Group-owned 8(a) firms[3] have seen huge success with the raising of their sole source threshold to $100 million without justification. While we are not seeking parity, increasing the 8(a) thresholds to allow for the $4.5/$7.5 million each year would bring the rules more into line with the government buying practices.

Multiple 8(a) procurements are being bundled and consolidated, with scope additions making their follow-on contracts too large for individual 8(a) companies to be awarded with the current sole source threshold limit. As a result, they often end up going to group-owned 8(a)s that have large sole source thresholds. Data on these awards remains too broad and both the SBA and small businesses could benefit from additional

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[2]Government Accountability Office (GAO). "Gao-16-557, DOD Small Business Contracting: Use of Sole - Source 8(a) Contracts over $20 Million Continues to Decline." *Gao.gov*, 2016, https://www.gao.gov/pdf/product/677750.
[3] *See* Group-owned references 8(a)'s that are Community Development Corporations, Alaska Native Corporations, Native Hawaiian Corporations and Indian Tribes. *See* 13 CFR § 124.109.

insight on the government's buying in the 8(a) program. I suggest SBA break down their annual scorecard SDB spend into 4 sub-categories of awards: direct (sole source), competitive, individual 8(a) and group-owned 8(a). The FY2020 SBA scorecard[4] reported $59 billion in contracts to 8(a) firms, with $11.1 billion[5] in sole source awards. While these numbers seem high, a question that remains for a lot of individually-owned 8(a) companies is how many of these dollars are going to group-owned vs. individually-owned 8(a) companies. Mapping out the impact of these dollars would assist the Administration in identifying contracts that could be set aside or directly awarded to individually owned 8(a) firms.

In my past 9 years in the program, I've seen a reduction of 8(a) direct awards to individually-owned 8(a) firms, bundling and consolidation of contracts, and change of organization or contract scope to take opportunities away from the 8(a) program. Further, I have noticed a significant rise of large sole source contract awards to group-owned 8(a)s in the top ten services NAICS codes with virtually no opportunities left for individually-owned 8(a)s in a fiscal year. In my observation, it seems like the 8(a) program has become one that services the richest group-owned 8(a) franchises. This trend is unfortunately in direct conflict with the original intent of the entire 8(a) program itself. While our fellow group-owned firms deserve their fair share, unfortunately, due to their significantly greater lobbying power backed by billion-dollar firms, many of the regular middle-class citizens running individually-owned 8(a) firms are helpless and have lost hope in the program.

There is also some confusion in scorecard reporting with respect to which awards are truly set-aside for certain programs. Agencies are allowed to "double count" awards toward their goals[6] – meaning, if a company is both an 8(a) and HUBZone certified business, an award to this business counts toward meeting both socioeconomic set-aside goals. Unfortunately, this practice does not necessarily incentivize agencies to

[4] *See* SBA FY2020 Small Business Procurement Scorecard, available at https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf (last visited Feb. 24, 2022).
[5] https://sgp.fas.org/crs/misc/R44844.pdf
[6] *See* 15 U.S.C. § 644(g) (Goals for participation of small business concerns in procurement contracts).

maximize the number of awards to small businesses. As the industrial base continues to shrink, as well as 8(a) participants, any enticement for agencies to award more contracts to small businesses is needed. It is my view that federal agencies should be required to have an 8(a) set-aside component as a follow on to all their large indefinite delivery/indefinite quantity (IDIQ) procurement contracting vehicles. This would immensely help transitional and graduating 8(a) firms, as they prepare themselves to compete for unrestricted solicitations.

Increasing the number of PCRs would make a significant impact on the success of 8(a) companies, both during and after the program. The Office of Government Contracting at SBA employs a team of Area Directors, PCRs, and Commercial Market Representatives (CMRs) that continually work with federal agencies to increase federal contracts awarded to small businesses. However, there are not enough, and Congress should increase the funding for these important positions.

PCRs increase the small business share of Federal procurement awards by initiating small business set-asides, reserving procurements for competition among small business firms; providing small business sources to Federal buying activities; and counseling small firms. In addition, PCRs, advocate for the breakout of items for full and open competition to affect savings to the Federal Government. There are thousands of buying activities across the country. However, there are currently only approximately 65 PCRs and CMRs advocating for small business prime and subcontracting opportunities. Additionally, more of these valuable personnel are needed to assist when work is pulled unjustly from an 8(a) firm. For example, in my 9 years in the 8(a) program, I have researched 100s of 8(a) contracts as business development opportunities. The majority of them were shifted to agency specific and GSA government wide contract vehicles in the general small business category rather than keeping them as an 8(a) set-aside. Agencies sometimes failed to involve SBA PCRs as they consolidated, bundled, and increased the scope of the contract above the 8(a) direct, sole source threshold.

A significant portion of small business eligible contract dollars are not tapped for small businesses due to the lack of contracting resources, such as PCR/CMR coverage. According to Bloomberg Government, although small businesses won $144 billion of $681 billion in contract awards in FY2020, their share of the remarket remained relatively flat at about 22%. By adding over 130 additional personnel to strategically cover buying activities with small business opportunity, the SBA would be able to significantly increase federal contracting opportunities for small businesses. In the hiring of additional PCRs and CMRs, SBA should also consider the benefits of hiring industrial, engineering, and technical specialists. Congress should appropriate $20 million for the SBA's General Salaries Fund,[7] with a directive to fund 18 CMRs and 180 PCRs.

One of the challenges I have heard from my fellow program participants is entering the program and failing to win any contract awards for the first few years. I can relate to this struggle – I was ready to give up on the program when in my 3rd year I still had not won any contracts. After being in the commercial sector for 14 years, while the federal space was new for me, I certainly had a strong list of capabilities. Every year in the 8(a) program is coveted by participants, so to "waste" the first few years without any success can feel frustrating. However, I was able to get my first contract with the Department of the Air Force to support records management for the Wilford Hall hospital. My federal business started taking off, but because I was already into the end of my 3rd year, I felt the pressure of the Business Activity Target (BAT) requirements in the 8(a) program regulations much sooner. BATs exist to ensure that participants are not developing a sole reliance on 8(a) awards and are making maximum efforts to obtain business outside the 8(a) program. While this makes sense, the structure should be changed since it currently unintentionally penalizes firms that do not get awards in the first few years in the program. The developmental stage of the program should start with the award of the first contract, instead of right away. Cutting some transitional years by

[7] Currently, funding for PCRs/CMRs comes out of the General Salaries Fund.

making this change would benefit companies, since past performance helps companies win non-8(a) business and meet the activity targets.

Another change to the activity targets that would help participants succeed is allowing the 8(a) competitive dollars to be considered as small business competitive awards. Therefore, the BAT restrictions would only apply to 8(a) sole source revenue. For example, we won a Clinical Support Services Healthcare contract as an 8(a) competitive award, which proved our ability to compete and win with tight margins. However, due to the BAT restrictions, it ended up hurting us – making us ineligible to compete for the follow-on to our own contracts and other multi-million dollar contracts. The restriction has been a challenge for most of the remaining years of the 8(a) program, even after delivering our services with government evaluated “very good” ratings year after year on most of our contracts. In the current highly competitive contract environment, demonstrating competitive winning capability on 8(a) contracts is on par with any other small business competitive procurements and thus in line with the intent of BAT policy. The number 8(a) graduates in 2009 and 2010 receiving federal prime contract obligations declined more than 60% by 2017, and the total value of their contracts by nearly the same amount.[8] In addition, the average size of contract obligations per DUNS number rose very little, from $6.05 million in graduation year to $6.25 million in FY2017. Adjusted for inflation, the value of such obligations actually declined.[9]

Further, in 2020 the total asset restriction was changed to allow a total of $750,000 in personal net worth when a participant enters the program.[10] However, an individual’s

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[8] Berteau, David J, and Amanda Swanson. “The Impact of 8(a) Small Business Graduation .” *Dair.nps.edu*, Acquisition Research Program, Graduate School of Business and Public Policy, Naval Postgraduate School, 2018, https://dair.nps.edu/bitstream/123456789/1602/1/SYM-AM-18-087.pdf.

[9] *Id.*

[10] On May 11, 2020, the SBA announced in the Federal Register that, as of July 15, 2020, personal net worth of less than $750,000, both at the time of entry into the 8(a) program and for continuing eligibility, will constitute economic disadvantage.41 The SBA indicated that it was eliminating the $250,000 personal net worth threshold at the time of entry into the 8(a) program to bring the 8(a) program into conformity with the personal net worth threshold used for determining the status of EDWOSBs in the SBA’s WOSB federal contracting program. That program uses less than $750,000 in personal net worth for determining economic disadvantage.

total assets cannot exceed $750,000 throughout the 9 years.[11] As a business owner, this does not make sense – if one of the goals of the program is to grow small disadvantaged companies, the asset restriction should increase as well. I suggest setting a cap of three times the initial personal net worth restriction of $750,000, as previous regulations allowed for asset growth three times the amount from entrance into the program. Similarly, for continued eligibility, each threshold should be increased three times for a Total Assets restriction of $20 million; 3-year average Adjusted Gross Income of $1 million; and total annual income maximum of $1.2 million. I believe this is a much more realistic number for a growing business.

Finally, marketing to federal agencies remains a challenge for businesses in the program. I have found success when I am able to get in front of a customer multiple times, which has been increasingly difficult amidst the pandemic. With in-person events returning, I suggest SBA district offices hold local small business events once a quarter. This would help the 8(a) firms in that locale meet with potential customers and network with other companies in the program. I have found that talking to my fellow 8(a) participants has been the "secret sauce" for great success in the program.

I cannot express the appreciation I have for the 8(a) program and how it has dramatically changed my business after a tough survival from both the 2001 and 2008 recessions. I am sincerely thankful for the excellent support obtained from my local SBA San Antonio district office team, Ms. Sheena Little, PCR; Theresa Scoot and Eric Spencer (BoS), and recently retired District Director Mr. Anthony Ruiz. I would also like to thank prior Associate Administrator Ms. Jackie Robinson Burnette who is joining me here today, SBA Counsel John Klein, and the many SBA specialists and officers who are working hard for the thousands of small businesses and for the protection of the 8(a) program - a successful hallmark of the SBA. Not only does AVOSYS' success impact me, but it also impacts the more than two hundred employees I have hired around the country as a result. Thank you for holding this important hearing today and I look forward to answering your questions.

[11] 13 C.F.R. §124.104.