



Written Testimony of

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On Behalf of
Montgomery County Chamber of Commerce (MCCC)

Before the
House Committee on Small Business Subcommittee on Contracting
and Infrastructure

“Cleared for Takeoff? Implementation of the Small Business
Runway Extension Act”

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Good morning Chair Golden and Ranking Member Stauber. I want to thank you for the opportunity to testify on this important topic. My name is Erin Allen, President of Contemporaries, Inc. I am testifying today on behalf of the 500-member Montgomery County, Maryland, Chamber of Commerce (MCCC) and am a member of its Board of Directors and co-Chair of the Chamber's small business committee.

I am here for two reasons: first, to thank this Committee for working with us to pass the Runway Extension Act last year and second, to press for expedited implementation of this important law which affects businesses, like mine, nationwide.

As background, an important part of the Chamber is its GovConNet Council, which is comprised of industry procurement experts. The Council meets monthly to tackle federal contracting issues that affect small and midsize firms. Large companies are also an important part of the Chamber membership and they support efforts to assist small and midsize companies to obtain success in federal contracting.

Two years ago, the GovConNet Council identified a problem with respect to small businesses who were exceeding their size standard quickly. As small businesses and government contracts become larger, it is inevitable that they will face choices – grow beyond the small business programs to compete with large companies, stay small to avoid the difficulties of competing in a “full and open” environment, sell, or go out of business. Unfortunately, it appears that more and more firms are being forced to make those latter choices — stay small, sell, or go out of business.

These midsize businesses, of whom there are only 1,700 doing federal contracting work, compete not only with very large businesses, but also small businesses who receive set aside

federal work.¹ The Council recommended to Congress and this Committee that a path forward would be to allow small businesses to take into account a 5-year lookback with respect to revenues rather than the current three years. This is a relatively modest change, but an important one—at least to the many companies nationwide who have contacted us to express their gratitude for the change.

Before I go any further, let me just take a minute to give you the story of Contemporaries and why this issue is important to me. I am a second generation business owner – my parents started this business in 1991, providing administrative and clerical support to federal agencies, local universities, and a multitude of private sector companies. When I was tapped as President, our business had just under \$4 million in sales. Fifteen years later, we are one of the largest providers of staffing services to the National Institute of Health (NIH). Federal contracts constitute the majority of our revenue. In the D.C. metro, we are ranked as one of the top ten vendors under the GSA Federal Supply Schedule for Schedule 736. As a result of that steady growth, we find ourselves at the top of our size standard, which is revenue based.

Our size standard is \$7.5 million, a very small business for our industry, when compared to the large companies that sell these services to the federal government. My concern comes from having the time to accommodate future growth in a steady manner. The last three years have been good for our business. But the downside is that I risk losing that momentum, should I continue that growth or be awarded a large contract. If the Runway Extension Act goes into effect, I will have a few more critical years to build my infrastructure, develop talent, and comply with the costly new cyber security requirements the federal government is putting into place for its

¹ Bloomberg Government, The Mid-Tier Market 2018 Company Report (2018).

contractors. In the end, my goal is to grow the company, create new jobs and contribute to the economy.

Fellow MCCC member, Steve Ramaley, testified before this Committee in April of 2018 on this critical issue, outlining MCCC's recommendations, including changing the formula for small business eligibility to the lowest three of the last five years. The rationale behind this proposed change can be stated simply: competitiveness takes time to build. Revenue is not an indicator of present competitiveness; it is an indicator of future competitiveness. Bigger small businesses that are about to graduate from the set-aside world need time to recruit talented employees, develop their intellectual property and build infrastructure to compete at the next level. Having a good year (or even a couple of good years) does not mean that the company will continue to grow. Moving from the current three-year look-back, to a five-year lookback, would give firms more time to adjust to the full-and-open marketplace. Furthermore, firms that show consistent high revenues would still be graduated. In addition, another member of MCCC, Lisa Firestone, testified on behalf of Women Impacting Public Policy. Her testimony focused on the issue her business was facing—transitioning to a midsize company.

Small businesses face enormous infrastructure hurdles especially if they grow very quickly or win larger federal contracts with big task orders. Some refer to this as the Powerball effect, leaving businesses scrambling to stay ahead of the demands of their growth and simultaneously trying to compete on the open market. A firm like mine simply can't compete with the large federal contractors overnight. Government contractors experience a unique pattern in their growth which is causing this midsize crisis – or no man's land. Contractor growth can be mercurial, sometimes hovering in the single digits and then exploding over two or three years. This pattern of sudden growth is increasingly common because of the Government's more frequent use of large

indefinite delivery, indefinite quantity (IDIQ) contract vehicles, under which contractors can be awarded huge task orders. It is not unusual for a contractor to win a single award or task order that, on its own, bumps the contractor out of the small business program. As referenced earlier in my testimony, the SBA uses a three year average of revenues to determine program eligibility. So a company with historic revenues of \$15-\$20 million might win an \$80 million task order and be very quickly slingshotted out of the set-aside environment and into the full-and-open world. The Runway Extension Act was aptly named, as Congress understood that as planes became bigger and faster, runways had to be extended. As contracts become larger, small businesses need more time so that they don't crash land into full and open competition.

As we testified last year, not just big small and midsize companies benefit from the Small Business Runway Extension Act. Any small business that intends to grow will eventually benefit from these changes. Further, having more well-qualified firms under the revenue standards will increase the chance that solicitations will be set-aside, and therefore will give all small firms more opportunities to compete. Separately, large businesses benefit because it increases the pool of well-qualified subcontractors. A major complaint we hear from large primes is that by the time they find a great small partner, the work garnered from that relationship makes the partner large.

The Small Business Runway Extension Act, as passed by the last Congress, addresses these issues. Unlike MCCC's original proposal, which would have allowed companies to choose the lowest of 3 out of previous 5 years, the legislation simply changed the current 3-year revenue average to a 5-year average for purposes of determining size. The bill, signed into law on December 17, 2018, provided a collective sigh of relief for many small businesses all over the country.

We expected the change to be effective immediately. However, since its passage into law, the SBA has posed the argument that the size determination changes should not take effect immediately, as the agency should first be able to utilize the rulemaking process and seek public comment. This decision by the SBA puts business decisions in limbo. While the law says they can take a 5-year average, SBA's rulemaking delays the process putting businesses in a precarious spot. Should they plan on a 5-year revenue average if and when the SBA makes the change final. Or should they risk being bumped out of being small, reengineer their business plan only to be eligible again when the SBA acts?

During a Senate Small Business hearing last month, Administrator McMahon committed to Senator Cardin that the agency would start work on the rulemaking immediately. In that vein, we urge the Agency to expedite the process by issuing a final rule, thus cutting out months in the rulemaking process. According to the Federal Register, under the Administrative Procedures Act, an agency can issue a final rule without publishing a proposed rule when, among other things, "where an agency has no discretion to propose a rule because Congress has already directed a specific regulatory outcome into law."² We believe that there was no question as to the intent of the Congress—there was a hearing, a markup, a clear Congressional record, and specific statutory language leaving no discretion with respect to the regulatory outcome. The law amended the Small Business Act by replacing "3 years" with "5 years". Together with the Congressional record, SBA is left with no discretion to deviate from a 5-year period of measurement.

While it seems unnecessary for the Congress to reiterate its intent that the legislation passed be implemented by issuing new legislation, we support any effort to insist on implementation.

² A Guide to the Federal Rulemaking Process, Office of the Federal Register, available at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (2011).

Agency delay is not unfamiliar to us – the SBA took 11 years to implement the women’s procurement program (8m) of the Small Business Act. This committee is within its right to insist on expedited action. At the end of the day, regardless of the method of implementation, the Small Business Runway Extension Act is an important first step toward assisting successful small businesses to grow. The damage caused by the delay is being felt by small businesses all over the country, not just inside the beltway. The longer implementation takes, the more uncertainty and confusion results for small business owners.

Thank you for the opportunity to testify and I look forward to answering any questions you may have.