

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

April 2, 2025

The Honorable Robert F. Kennedy, Jr.
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Kennedy,

We write to express our concerns on the impact and disruptions that impulsive, arbitrary, and vague directives are causing for small business government contractors. We urge you to take concrete steps to limit the harm these policies are inflicting on small businesses working with your agency. The consistently changing requirements regarding agency staffing, resource reviews and contract actions threaten the ability of small businesses to pay bills and stay solvent, while remaining in the federal market.

Procurement laws require federal agencies to undertake certain actions to ensure small businesses are treated fairly, paid in a timely manner, have contracting opportunities, and can compete on a fair playing field. These deliberately crafted and unique-to-small-business-policies are a recognition that small firms could not participate in government contracting if required to compete against the large businesses that make up the industrial base. The lack of size, scale, and funds make small businesses vulnerable to deliberately confusing and intentionally cruel directives. Large corporations like Tesla and SpaceX benefit from access to the highest levels of government and have a seat at the rulemaking table, while small businesses are expected to weather the storm. Many of whom will not make it through.

A trend in government contracting emerged over a decade ago when small businesses began to leave the federal market faster than usual, and fewer new companies were signing up to take their place. As a result, total small vendors in the government's ecosystem have been cut almost in half.¹ The shrinking industrial base set off bipartisan alarms—and even prompted the Department of

¹ WHITE HOUSE OFF. OF MGMT. & BUDGET, *M-22-03: Advancing Equity in Federal Procurement* (Dec. 2, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf> (on file with the H. COMM. ON SMALL BUS.).

Defense to label it a national security risk.² The recent Executive Orders, and the follow-on agency actions, will accelerate this trend—and increasingly appear specifically designed to do so.³

The decisions to delay or withhold payment on invoices will have a devastating and disproportionate impact on small contractors. Invoices are the bills for work already performed as required by the contract—not a future spending issue. Being paid for work in a timely manner impacts all aspects of a small firm’s operations, including: (1) cashflow—the critical lifeline that keeps small businesses in the black; (2) access to credit—which allows them to operate, invest and grow; and (3) the ability to make payroll—which keep their employees paid and working.

Accordingly, we urge you to take immediate action to limit the harm these directives are causing and ask that you reiterate the procedures that were deliberately put in place to protect small businesses. We offer the following actions as a starting point:

1) Pay Outstanding Invoices and Prioritize Small Businesses:

Companies of all sizes have outstanding invoices for work previously performed as required by the contracts they legally entered with your agency. All should be paid, and as expeditiously as possible. Not paying invoices to companies that already provided the products or services will not increase efficiency and is not good government, it’s stealing.

Small businesses cannot afford to wait as long as larger corporations to be paid once they have delivered the product or performed the service. Timely payment laws, including the Prompt Payment Act (PL 97-177),⁴ were enacted to counter the well-known and negative consequences of limited or restricted cashflow, especially for small businesses.

2) Accelerate Payments to Small Businesses:

To underscore the unique challenges associated with small business financing, Congress has directed agencies to provide accelerated payments for small business prime- and sub-contractors.⁵ The 15-day goal has helped to ensure that small businesses have the cashflow necessary to finance day-to-day operations, make payroll and invest in future growth.

It is important to highlight that this law’s goal applies to small business prime contractors and other-than-small prime contractors with first-tier small business subcontractors. Small businesses make up critical parts of many large company’s supply chains and will also be

² Press Release, U.S. DEP’T OF DEFENSE, DOD Increases Efforts to Bring Small Businesses Into Defense Industrial Base (Mar. 24, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3339784/dod-increases-efforts-to-bring-small-businesses-into-defense-industrial-base>.

³ Examples of these directives include, but are not limited to: Executive Order 14222, Implementing the President’s “Department of Government Efficiency” Cost Efficiency Initiative; Office of Management and Budget Memorandum (M-25-13), Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs; Executive Order 14169, Reevaluating and Realigning United States Foreign Aid; and General Services Administration Letter: Assistance with Terminating, Descoping, and Justifying Consulting Contracts; and Department of Defense Memo: Review and Validation of Contracts for Consulting Services, among many others.

⁴ Prompt Payment Act, Pub. L. No. 97-177, 96 Stat. 85 (1982) (codified at 31 U.S.C. § 3903).

⁵ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 852, 132 Stat. 1884-1885 (2018) (codified at 10 U.S.C. § 2283, 2283 note, prec. 2281); National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 873, 133 Stat. 1527 (2019) (codified at 10 U.S.C. § 2371).

negatively impacted by the disruptions, with fewer avenues for recourse than small business primes.

3) Take Actions Regarding Small Business Subcontractors:

In addition to the government's responsibility for its payments, contracting officers are required to perform oversight of the timeliness of payments from large prime contractors to their small business subcontractors. Currently, prime contractors are required to notify their contracting officers if full payment is not made to a small business subcontractor within 90 days.⁶

Recent legislation enacted by the Congress reduced this timeline to 30 days.⁷ The Small Business Administration (SBA) and the Federal Acquisition Regulation (FAR) Council have proposed but not yet finalized these regulations.⁸ However, agencies can—and have previously—encouraged early adoption of pending regulations.⁹ Directing agency personnel to adhere to the new 30-day timeline would incentivize quicker payments to small business subcontractors who you cannot more directly assist because they lack privity.

4) Target Contracting Policies to Limit Negative Impacts for Small Businesses

After-the-fact restrictions on invoice payments for work already performed are likely to force small businesses out of the industrial base or out-of-business, while sending a signal that the federal government does not pay its bills. While the blanket, and confusing, directives may not specifically target small businesses, they are disproportionately impacted by them.¹⁰ Accordingly, we urge you to take proactive steps to intentionally and deliberately shield small businesses to the maximum extent possible as you work through these reviews, including:

- Limit issuances of stop-work orders unless, and until, absolutely necessary for contracts awarded to small business concerns. As we see regularly during government shutdowns, small businesses are disproportionately harmed from stop-work orders, and not only from the financial hit. The administration of a stop-work order for a firm and its subcontractors and suppliers is burdensome, time-consuming, and costly.

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 1334, 124 Stat. 1542-1543 (2010) (codified at 15 U.S.C. § 637(d)(13)).

⁷ Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, § 862 (2024).

⁸ Small Business Contracting: Increasing Small Business Participation on Multiple Award Contracts, 89 Fed. Reg. 85072 (Oct. 25, 2024); Federal Acquisition Regulation: Small Business Participation on Certain Multiple-Award Contracts; 90 Fed. Reg. 3753 (Jan. 15, 2025).

⁹ See, e.g., General Services Administration Memorandum: FAR Class Deviation - Accelerated Payments to Small Business Contractors and Subcontractors, Class Deviation CD-2020-08 (Apr. 10, 2020): https://www.acquisition.gov/sites/default/files/caac/deviation/GSA_CD-2020-08_0.pdf; Department of Defense Memorandum: Small Business Participation on Multiple-Award Contracts (Mar. 19, 2024): <https://www.cq.osd.mil/dpap/policy/policyvault/USA000747-24-DPC.pdf>.

¹⁰ Max Zahn, *Some small businesses are on the brink after Trump's spending cuts affect contracts*, ABC NEWS (Feb. 25, 2025), <https://abcnews.go.com/Business/federal-spending-cuts-cripple-small-businesses-government-ties/story?id=119182985>; Emily Badger et al., *The Big Government Contracts DOGE Hasn't Touched*, N.Y. TIMES (Mar. 4, 2025), <https://www.nytimes.com/interactive/2025/03/04/upshot/doge-musk-contracts-cuts.html>.

- Continue awarding contracts at or below the Simplified Acquisition Threshold to the maximum extent practicable. These contracts represent small-dollar amounts to the government but can be a lifeline to the smallest of small government contractors. These contracts could help blunt the impact of disruptions on a small business's other contracts and keep open a mechanism traditionally used by small firms seeking to enter the market for the first time.
- Protect small business agency personnel and resources when conducting policy and spending reviews, Reductions in Force, or similar efforts. Small business acquisition professionals including those in your Office of Small and Disadvantaged Business Utilization (OSDBU) or outreach operations, like APEX Accelerators, are a resource for existing and aspiring small contractors, and act as their internal advocates at the agencies.

5) Reiterate Existing Requirements for Agency Acquisition Personnel

No small business should be penalized for contracts that were meritoriously awarded, legally entered, and have satisfactory performance, exclusively based on a change in administration or change in policy. The process and procedures for the complete or partial termination of a contract have been designed and are regularly reviewed by Congress and the FAR Council, to ensure fairness for both the government and contractor.

The rights, duties, and obligations of the parties, including compensation to the small business contractor, are prescribed in Part 49 of the FAR.¹¹ These requirements provide the legal framework for a contracting officer's next steps. Adherence to existing policies and procedures will limit the number of contracts requiring future dispute resolution, and the associated legal costs to the government and contractor.

We believe that the above actions would help provide some stability for small business government contractors despite the ongoing challenges they face. While the cascading effects for individual small businesses—the owners, and their families, employees, and communities—are a priority for many of us as Members of Congress, the overall impact on the industrial base should be a priority for your agency. The short- and long-term impact of unpaid bills, and unnecessary instability on the government's capacity to recruit and retain small businesses, cannot be underestimated. Federal government contracts have always provided small businesses with stability and predictability. They are why many pursue federal opportunities when commercial markets can bring less restrictions and higher profits.

If small businesses do not believe that federal agencies will pay invoices or adhere to the requirements of the contract, they will be less willing to become or remain federal contractors. The government will lose the talent, innovation, and solutions that small businesses bring and contribute to a robust national industrial base.

We urge you to take action to limit these negative outcomes and use the options available to you to prioritize the retention of your agency's small business partners.

¹¹ FAR 49.

Pursuant to Rule X of the House of Representatives, the Committee on Small Business (Committee) has broad authority to investigate “problems of all types of small business.” The Committee possesses jurisdiction over “assistance to and protection of small businesses.”

Thank you for your attention to this matter. If you have any questions, please contact the Committee’s Minority staff at (202) 225-4038.

Thank you,



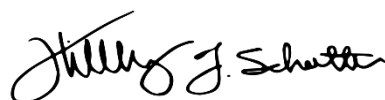
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Ranking Member
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Ranking Member
Subcommittee on Contracting
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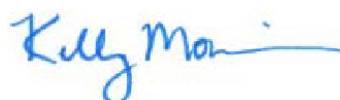
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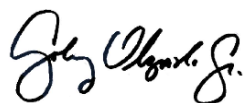
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