

Calendar No. 561

117TH CONGRESS
2^D SESSION**S. 4623****[Report No. 117-209]**

To advance Government innovation through leading-edge procurement capability, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2022

Mr. PETERS (for himself, Ms. ERNST, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 17, 2022

Reported by Mr. PETERS, without amendment

A BILL

To advance Government innovation through leading-edge procurement capability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advancing Government
5 Innovation with Leading-Edge Procurement Act of 2022”
6 or the “AGILE Procurement Act of 2022”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The Government Accountability Office
4 (GAO) has conducted a trend analysis of govern-
5 mentwide contracting for each of the last several fis-
6 cal years. These analyses show that the Federal dol-
7 lars obligated through contracts has been steadily in-
8 creasing.

9 (2) Contract spending accounts for more than
10 80 percent of the Federal information technology
11 budget.

12 (3) Spending on cybersecurity, software, cloud
13 computing, and artificial intelligence technologies is
14 projected to grow significantly.

15 (4) Rapid technological developments and in-
16 creased Government demand create a need for a
17 Federal acquisition workforce with an understanding
18 of technology and related procurement consider-
19 ations.

20 (5) Recruitment and retention of procurement
21 staff are chief concerns for Federal agencies, which
22 are facing a shortage of procurement professionals
23 despite growing contract spending and the need for
24 a faster procurement process to keep pace with tech-
25 nological advancements.

1 (6) Federal agencies are challenged to shorten
2 the procurement cycle to timely meet agency tech-
3 nology requirements. Unlike in the past, procure-
4 ments that take years from requirements develop-
5 ment to implementation may be obsolete by the time
6 they are fielded.

7 (7) While Federal contracting dollars are in-
8 creasing year over year, the number of Federal con-
9 tractors receiving contract awards is shrinking, par-
10 ticularly with regard to new and small companies.
11 This trend could impair the Federal Government’s
12 access to innovative commercial technologies.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) ACQUISITION WORKFORCE.—The term “ac-
16 quisition workforce” means employees of an execu-
17 tive agency who are responsible for procurement,
18 contracting, program or project management, or oth-
19 ers as designated by the Chief Acquisition Officer,
20 Senior Procurement Executive, or Head of the Con-
21 tracting Activity.

22 (2) ADMINISTRATOR.—The term “Adminis-
23 trator” means the Administrator for Federal Pro-
24 curement Policy.

1 (3) CROSS-FUNCTIONAL.—The term “cross-
2 functional” means a structure in which individuals
3 with different functional expertise or from different
4 areas of an organization work together as a team.

5 (4) EXECUTIVE AGENCY.—The term “executive
6 agency” has the meaning given the term in section
7 133 of title 41, United States Code.

8 (5) EXPERIENTIAL LEARNING.—The term “ex-
9 periential learning” means on-the-job experiences or
10 simulations that serve to enhance workforce profes-
11 sional skills.

12 (6) INFORMATION AND COMMUNICATIONS
13 TECHNOLOGY.—The term “information and commu-
14 nications technology” has the meaning given the
15 term in subpart 2.101 of the Federal Acquisition
16 Regulation and includes associated services.

17 (7) QUALIFIED BUSINESS WHOLLY-OWNED
18 THROUGH AN EMPLOYEE STOCK OWNERSHIP
19 PLAN.—The term “qualified businesses wholly-owned
20 through an Employee Stock Ownership Plan” means
21 an S corporation (as defined in section 1361(a)(1)
22 of the Internal Revenue Code of 1986) for which
23 100 percent of the outstanding stock is held through
24 an employee stock ownership plan (as defined in sec-
25 tion 4975(e)(7) of such Code).

1 (8) RELEVANT COMMITTEES OF CONGRESS.—
2 The term “relevant committees of Congress” means
3 the Committee on Homeland Security and Govern-
4 mental Affairs of the Senate and the Committee on
5 Oversight and Reform of the House of Representa-
6 tives.

7 (9) SMALL BUSINESS.—The term “small busi-
8 ness” has the meaning given the term “small busi-
9 ness concern” in section 3 of the Small Business Act
10 (15 U.S.C. 632).

11 **SEC. 4. ACQUISITION WORKFORCE.**

12 (a) PATHWAYS TO PROCUREMENT PILOT PRO-
13 GRAM.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of the enactment of this Act, the Adminis-
16 trator, in coordination with the Federal Acquisition
17 Institute and the Office of Personnel Management,
18 as necessary, shall pilot a program for entry of jun-
19 ior and mid-career professionals to the General
20 Schedule Contracting series (GS–1102) workforce,
21 by—

22 (A) considering the inclusion of program
23 participants from other job series and fields, in-
24 cluding veterans, military spouses, and private
25 sector procurement professionals;

1 (B) providing alternatives to education and
2 training requirements for entry into the General
3 Schedule Contracting series (GS–1102) work-
4 force, such as allowing for use of educational
5 credits in a technical discipline relevant to
6 agency procurement, such as information and
7 communications technology and scientific and
8 engineering disciplines;

9 (C) providing pathways to reciprocity or
10 fulfillment of certification requirements for De-
11 partment of Defense professional contracting
12 certification holders and commercial sector ac-
13 quisition certification holders, such as certified
14 professional contract managers and certified
15 Federal contract managers; and

16 (D) providing a capstone class or experi-
17 ence and relevant mentorship opportunities.

18 (2) BRIEFING.—Not later than 2 years after
19 the date of the enactment of this Act, the Adminis-
20 trator shall provide to the relevant committees of
21 Congress a briefing on implementation of the pilot
22 program and any recommendations related to expan-
23 sion or extension.

1 (3) DURATION.—The duration of the pilot pro-
2 gram under this subsection shall be not less than 5
3 years after the date of the enactment of this Act.

4 (b) EXPERIENTIAL LEARNING.—Not later than 1
5 year after the date of the enactment of this Act, the Fed-
6 eral Acquisition Institute shall incorporate experiential
7 learning into the training framework for the General
8 Schedule Contracting series (GS–1102).

9 (c) TRAINING ON INFORMATION AND COMMUNICA-
10 TIONS TECHNOLOGY ACQUISITION.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of the enactment of this Act, the Federal
13 Acquisition Institute, in coordination with the Ad-
14 ministrator, the Administrator of General Services,
15 the Chief Information Officers Council, and the
16 United States Digital Service shall develop and im-
17 plement or otherwise provide a cross-functional in-
18 formation and communications technology acquisi-
19 tion training program to acquisition workforce mem-
20 bers involved in acquiring information and commu-
21 nications technology. The training shall—

22 (A) include learning objectives related to
23 market research and communicating with in-
24 dustry, developing requirements, acquisition
25 planning, and awarding and administering con-

1 tracts for information and communications
2 technology;

3 (B) include learning objectives encouraging
4 use of small business programs to acquire infor-
5 mation and communications technology;

6 (C) include learning objectives encouraging
7 the use of commercial or commercially available
8 off-the-shelf (COTS) technologies to the great-
9 est extent practicable;

10 (D) include case studies of lessons learned
11 from Federal information and communications
12 technology procurements and contracts;

13 (E) include experiential learning opportu-
14 nities;

15 (F) include continuous learning rec-
16 ommendations and resources to keep the skills
17 of acquisition workforce members current; and

18 (G) be made available to acquisition work-
19 force members designated by a Chief Acquisi-
20 tion Officer, Senior Procurement Executive, or
21 Head of the Contracting Activity to participate
22 in the training program.

23 (2) REPORT.—Not later than 18 months after
24 the date of the enactment of this Act, the Director
25 of the Federal Acquisition Institute shall provide to

1 the relevant committees of Congress, the Chief Ac-
2 quisition Officers Council and the Chief Information
3 Officers Council—

4 (A) a briefing outlining the Director's
5 progress in developing and implementing or
6 otherwise providing the information and com-
7 munications technology acquisition training de-
8 scribed in paragraph (1); and

9 (B) a list of any congressionally mandated
10 acquisition training that the Director deter-
11 mines to be outdated or no longer necessary for
12 other reasons.

13 (3) DURATION.—The training program shall be
14 offered for a minimum of 5 years following the date
15 of implementation of the training program.

16 **SEC. 5. INNOVATIVE PROCUREMENT METHODS.**

17 (a) GUIDANCE ON INNOVATIVE PROCUREMENT
18 METHODS.—Not later than 1 year after the date of the
19 enactment of this Act, the Administrator shall issue guid-
20 ance to inform executive agencies on the availability of
21 streamlined and alternative procurement methods for pro-
22 curement of information and communications technology,
23 including—

24 (1) simplified procedures for certain commercial
25 products and commercial services in accordance with

1 subpart 13.5 of the Federal Acquisition Regulation,
2 prize competitions under the America COMPETES
3 Reauthorization Act of 2010 (Public Law 111–358),
4 commercial solutions opening authorities as provided
5 in this section or under separate authority, the
6 Small Business Innovation Research Program, and
7 joint venture partnerships through agreement with
8 National Technical Innovation Service within the
9 Department of Commerce; and

10 (2) information on appropriate use, examples
11 and templates, and any other information deter-
12 mined relevant by the Administrator to assist con-
13 tracting officers and other members of the acquisi-
14 tion workforce in utilizing the procedures described
15 in paragraph (1).

16 (b) EXPANSION OF COMMERCIAL SOLUTIONS OPEN-
17 ING AUTHORITY.—Section 880 of the National Defense
18 Authorization Act for Fiscal Year 2017 (Public Law 114–
19 328; 41 U.S.C. 3301 note) is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (2), by adding at the end
22 the following new subparagraph:

23 “(C) The head of an executive agency ap-
24 proved for the program, on a pilot or perma-

1 nent basis, by the Director of the Office of
2 Management and Budget.”; and

3 (B) in paragraph (3), by adding at the end
4 the following new subparagraph:

5 “(C) An executive agency approved for the
6 program by the Director of the Office of Man-
7 agement and Budget.”;

8 (2) in subsection (c), by striking “\$10,000,000”
9 and inserting “\$25,000,000”;

10 (3) by amending subsection (e) to read as fol-
11 lows:

12 “(e) REPORTING AND DATA COLLECTION.—The
13 head of an agency shall report information on contracts
14 made using procedures under this section to the Office of
15 Management and Budget as determined by the Office of
16 Management and Budget. The Administrator shall collect
17 and analyze data on the use of the authority under this
18 section for the purposes of—

19 “(1) developing and sharing best practices;

20 “(2) gathering information on the implementa-
21 tion of the authority and related policy issues; and

22 “(3) informing the Committee on Homeland Se-
23 curity and Governmental Affairs of the Senate and
24 the Committee on Oversight and Reform of the

1 House of Representatives on the use of the author-
2 ity.”;

3 (4) by amending subsection (f) to read as fol-
4 lows:

5 “(f) DEFINITIONS.—In this section—

6 “(1) the term ‘commercial product’ includes a
7 commercial product or a commercial service, as
8 those terms are defined in sections 103 and 103a,
9 respectively, of title 41, United States Code; and

10 “(2) the term ‘innovative’ means—

11 “(A) any new technology, process, or meth-
12 od, including research and development; or

13 “(B) any new application of an existing
14 technology, process, or method.”;

15 (5) by striking subsection (g);

16 (6) in the section heading, by striking “**Pilot**
17 **programs**” and inserting “**Programs**”; and

18 (7) by striking “pilot” each place it appears.

19 (c) CLERICAL AMENDMENT.—The table of contents
20 in section 2(b) of such Act is amended by striking the
21 item relating to section 880 and inserting the following
22 new item:

“Sec. 880. Programs for authority to acquire innovative commercial items using
general solicitation competitive procedures.”.

1 **SEC. 6. ADDRESSING BARRIERS TO ENTRY IN FEDERAL**
2 **CONTRACTING.**

3 (a) USE OF PAST PERFORMANCE.—Not later than
4 1 year after the date of the enactment of this Act, the
5 Administrator shall issue guidance, including examples
6 and templates where appropriate, on—

7 (1) when a wider range of projects, such as
8 commercial or non-government, as well as Govern-
9 ment projects, should be accepted as relevant past
10 performance, in order to have access to a wider pool
11 of eligible firms with capability to perform a require-
12 ment, such as a requirement without much prece-
13 dent; and

14 (2) use of alternative evaluation methods that
15 may be appropriate for a requirement without much
16 precedent.

17 (b) ADDRESSING BARRIERS TO ENTRY.—

18 (1) ADDRESSING BARRIERS TO ENTRY WORK-
19 ING GROUP.—Not later than 90 days after the date
20 of the enactment of this Act, the Administrator shall
21 convene a working group or an appropriate existing
22 body (in this section referred to as the “working
23 group”), to make recommendations to reduce bar-
24 riers to entry for entities seeking to do business with
25 the Federal Government.

1 (2) MEMBERSHIP.—The working group convened under paragraph (1) shall be chaired by the Administrator or a designee of the Administrator and include, at a minimum, representatives from:

5 (A) The General Services Administration.

6 (B) The Department of Homeland Security.

8 (C) The Department of Commerce.

9 (D) The Department of Defense.

10 (E) The Department of Health and Human Services.

12 (F) The Small Business Administration.

13 (G) Any other agencies or organizations, including national security agencies, determined appropriate by the Administrator.

16 (3) CONSULTATION.—The working group shall obtain input from the public, including from the Procurement Technical Assistance Center (PTAC) network and from other industry representatives, on ways in which Federal procurement policies and regulations are obsolete, overly burdensome or restrictive, and serve to create barriers to participation in Federal contracting or unnecessarily increase bid and proposal costs.

1 (4) EXAMINATION OF ACTIONS.—The working
2 group shall consider the input obtained under para-
3 graph (3) and any other information determined to
4 be appropriate by the Administrator to identify leg-
5 islative, regulatory, and other actions to foster more
6 resilient supply chains, provide access to a wider
7 pool of qualified vendors, and increase opportunities
8 for participation of new, small, and nontraditional
9 businesses in the procurement process, in addition to
10 addressing other barriers.

11 (5) IMPLEMENTATION.—Not later than two
12 years after the date of the enactment of this Act, the
13 Administrator shall, in consultation with the Federal
14 Acquisition Regulatory Council, the Chief Acquisi-
15 tion Officers Council, the working group, and other
16 agencies as appropriate, implement the regulatory
17 and other non-legislative actions identified under
18 paragraph (4) to address barriers to entry for enti-
19 ties seeking to participate in Federal Government
20 procurement.

21 (6) BRIEFING.—Not later than two years after
22 the date of the enactment of this Act, the Adminis-
23 trator shall brief the relevant committees of Con-
24 gress on the legislative actions identified under para-

1 graph (4), and the actions implemented under para-
 2 graph (5).

3 (c) REVISION TO THE MANDATORY USE OF THE
 4 COST ACCOUNTING STANDARDS.—Section 1502(b)(1) of
 5 title 41, United States Code, is amended—

6 (1) in subparagraph (B) by striking “the
 7 amount set forth in section 3702(a)(1)(A) of title 10
 8 as the amount is adjusted in accordance with appli-
 9 cable requirements of law” and inserting
 10 “\$15,000,000”; and

11 (2) in subparagraph (C)—

12 (A) in clause (ii), by striking the semicolon
 13 and inserting “; or”;

14 (B) in clause (iii), by striking “; or” and
 15 inserting a period; and

16 (C) by striking clause (iv).

17 **SEC. 7. INCENTIVIZING EMPLOYEE STOCK OWNERSHIP**
 18 **PLANS FOR BUSINESS GROWTH.**

19 (a) PILOT PROGRAM TO USE NONCOMPETITIVE PRO-
 20 CEDURES FOR CERTAIN FOLLOW-ON CONTRACTS TO
 21 QUALIFIED BUSINESSES WHOLLY-OWNED THROUGH AN
 22 EMPLOYEE STOCK OWNERSHIP PLAN (ESOP).—

23 (1) ESTABLISHMENT.—The Administrator may
 24 expand the pilot program authorized by section 874
 25 of the National Defense Authorization Act for Fiscal

1 Year 2022 (Public Law 117–81; 10 U.S.C. 3204
2 note) for governmentwide use, including by coordi-
3 nating as necessary with the Federal Acquisition
4 Regulatory Council to make related amendments to
5 the Federal Acquisition Regulation.

6 (2) FOLLOW-ON CONTRACTS.—Notwithstanding
7 the requirements of section 3301 of title 41, United
8 States Code, for purposes of carrying out a govern-
9 mentwide ESOP pilot program established under
10 paragraph (1), the products or services to be pro-
11 cured by an executive agency under a follow-on con-
12 tract with a qualified business wholly-owned through
13 an ESOP for the continued development, production,
14 or provision of products or services that are the
15 same as or substantially similar to the products or
16 services procured under a prior contract may be pro-
17 cured through procedures other than competitive
18 procedures if the performance of the qualified busi-
19 ness on the prior contract was rated as satisfactory
20 (or the equivalent) or better.

21 (3) LIMITATION.—A qualified business wholly-
22 owned through an ESOP may have a single oppor-
23 tunity for award of a sole-source follow-on contract
24 under this subsection, unless the senior procurement

1 executive of the executive agency awarding the con-
2 tract approves a waiver of such limitation.

3 (b) VERIFICATION AND REPORTING OF QUALIFIED
4 BUSINESSES WHOLLY-OWNED THROUGH AN EMPLOYEE
5 STOCK OWNERSHIP PLAN.—Under a pilot program estab-
6 lished under this section, the Administrator shall establish
7 procedures—

8 (1) for businesses to verify status as a qualified
9 business wholly-owned through an ESOP for the
10 purposes of this section by using existing Federal re-
11 porting mechanisms;

12 (2) for a qualified businesses wholly-owned
13 through an ESOP to certify that not more than 50
14 percent of the amount paid under the contract will
15 be expended on subcontracts, including similarly sit-
16 uated ESOPs if determined appropriate by the Ad-
17 ministrator, subject to such necessary and reason-
18 able waivers as the implementing guidance or regu-
19 lations may prescribe; and

20 (3) to record and provide to relevant commit-
21 tees of Congress upon request information on each
22 follow-on contract awarded under authority of this
23 subsection, including details relevant to the nature
24 of such contract and the qualified business wholly-
25 owned through an ESOP that received the contract.

1 (c) SUNSET.—A pilot program established under this
2 section shall expire on the date that is 5 years after the
3 date of the enactment of this Act.

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