



1 Mission Drive • Box 390
Winnebago, NE 68071

800.439.7008
402.878.2809

www.hochunkinc.com

Ho-Chunk Incorporated
Written Testimony for the Record
House Small Business Committee
Subcommittee on Contracting & Infrastructure
“Leveling the Playing Field: The State of Small Business Contracting”
May 11, 2023

Ho-Chunk Inc. (Ho-Chunk or HCI), a wholly owned subsidiary of the Winnebago Tribe of Nebraska, submits this testimony on the recently held Subcommittee hearing on small business contracting. Officials from HCI were able to attend the hearing in person because the subject matter is so important to our company. We thank Chairman Nick LaLota, Ranking Member Hillary Scholten, Committee and the Subcommittee members, and staff for their work and efforts on behalf of the small business community.

Tribes, like the Winnebago, utilize proceeds from government contracting to build, sustain, and operate their communities, for the betterment of their people in terms of education, healthcare, public works, and other community needs. Government contracting is the principal revenue generating activity for HCI, and we believe the Small Business Administration (SBA)’s 8(a) Business Development Program has been one of the most successful and consistent government contracting programs to date. Our comments draw on our experience as a parent company to successful small businesses with a depth of experience in government contracting with supply, professional services, and construction contracts.

Ho-Chunk agrees wholeheartedly with the Subcommittee’s statements in the Hearing memo that small businesses play an important role in America’s industrial base, and that the number of small businesses in that base have been rapidly declining in recent decades. This decline presents a significant risk to the defense industrial base and to America’s military.

Chairman LaLota’s statement that small businesses play a crucial role in “increasing competition, innovation, and stimulating our economy” is absolutely correct, as is the fact that “they have been systematically squeezed out of federal contracting for decades.”¹ We agree with the statements made by the witnesses in the hearing that category management contract vehicles are a significant barrier to small businesses and their growth. However, we believe excessive regulations are one of the most significant barriers to entry into government contracting and access to contracts Congress envisioned when creating small business programs.

Category management diminishes the opportunities for small businesses to participate in government contracting as category management vehicles generally have only a limited number of spaces for small business. In the Small Business Administration (SBA)’s response to a

¹ House Committee on Small Business Subcommittee on Contracting and Infrastructure. (2023, May 11). *Leveling the Playing Field: State of Small Business Contracting* [Press release]. <https://smallbusiness.house.gov/news>.

Government Accounting Office (GAO) report on Category Management², SBA stated that 53 percent of the contracts eliminated by category management were small business contracts. According to a 2019 Bloomberg report, the Federal supplier base had a 32% decline of small federal contractors working on unclassified prime contracts from 2009 to 2018³. This was compared to a 4% decline for large vendors during that same time period.

During a 2019 hearing of the U.S. Committee on Small Business & Entrepreneurship on the Reauthorization of the Small Business Administration's Contracting Programs, then Associate Administrator for the Office of Government Contracting and Business Development at the SBA, Robb Wong, in his response to the questions regarding the decline of small businesses in government contracting stated that "Category Management has a deleterious effect on small businesses because when contacts go to a large and complex contract vehicles for which small businesses do not qualify, or miss a short onboarding window, those small businesses don't have many contracts to replace those they lost. This in turn leads small businesses to quit seeking Federal contracts which in turn hurts the country's industrial base."⁴ And he was correct in his statement as the decline in the small business participation in the industrial base since then shows, and the Committee's concern with this decline.

In May of 2021, the U.S. Women's Chamber of Commerce issued a report entitled "Stop the Loss of Small Business Federal Suppliers", with a subtitle "The use of "Best-In-Class" contracting vehicles under the guise of Category Management is driving small businesses out of the federal marketplace."⁵ This report echoed the statements made by the witnesses during the Subcommittee's hearing, and called upon President Biden and Congressional Leaders to stop the "overwhelming loss of small business suppliers". The report indicated that "the unregulated process called Category Management through Best-In-Class contracts purposely suppresses competition, thereby driving up costs." That BIC contracts "leave out the vital competitive contributions that small business suppliers bring including agility, innovation, services and more." And that the "federal government should be "Open for Business" for small businesses as well as large firms."

Category management vehicles were created with the intent of providing the federal acquisition community with a more streamlined acquisition process based on major categories of federal procurement. The process has been streamlined and cost savings are touted. However, the darker side of the cost savings of these BIC contracts is not just the loss of contracting opportunities for small businesses. For example, to date there have been 270 protests involving the National Institutes of Health CIO-SP4 contract vehicle that date back more than a year.⁶ There needs to be

² General Administration Office (GAO). *Federal Buying Power OMB Can Further Advance Category Management Initiative by Focusing on Requirements, Data, & Training*. GAO-21-40 at 73 (Washington, DC. November 30, 2020).

³ Murphy, Paul. "Fed³ Murphy, Paul. "Federal Supplier Base Continued to Shrink in Fiscal 2018", Bloomberg Law, Bloomberg L.P. May 23, 2019. Web June 26, 2019

⁴ *Reauthorization of the SBA's Contracting Programs*. Hearing before the Senate Committee on Small Business and Entrepreneurship (June 12, 2019). 116th Congress (2019-2020) (testimony of Robb Wong)

⁵ U.S. Women's Chamber of Commerce. (May 2021) *Stop the Loss of Small Business Federal Suppliers*. uswcc.org/stop-the-loss

⁶ Wakeman, N. (2023, April 10). More than 100 Protests Greet CIO-SP4. *Washington Technology*, pg. 1. [More than 100 protests greet CIO-SP4 - Washington Technology](#)

Congressional action to allow small businesses greater access to category management vehicles or the loss to the small business industrial base will become greater than it already is.

Excessive regulations stifle small business participation in government contracting to a greater degree than even category management practices. A 2017 report from the U.S. Chamber of Commerce Foundation, “The Regulatory Impact on Small Business: Complex. Cumbersome. Costly”⁷ is still relevant to the issues facing today’s small businesses. That report found that “these job creators [small businesses] are increasingly strangled by a growing net of complex and cumbersome regulations at the federal, state, and local levels”, and that the “regulatory costs of just the largest federal rules totals more than \$40 billion, with small businesses shouldering a full 82% of the costs.”⁸ We would imagine with today’s runaway inflation those numbers are even higher.

An example of an unnecessary burdensome regulation is a recent SBA final rule in the 8(a) Business Development program related to category management vehicles and 8(a) sole source awards. That final rule states:

“Sections [13 CFR] 121.404(a)(1)(i)(B) and 121.404(a)(1)(ii)(b) provide generally that a business concern that qualifies as small at the time of an offer for a multiple award contract that is set aside or reserved for the 8(a) BD program will be deemed a small business for each order issued against the contract, unless a contracting officer requests a size recertification for a specific order.”⁹

This part of the final regulation tracks with the long-standing SBA rule that the size and status of a business generally relate back to the time of the initial offer on a contract. And that the small business generally stays small for the duration of a federal contract, with a few exceptions, one being the contracting officer can request a size recertification under certain circumstances.

However, SBA in this final rule singles out sole source 8(a) orders “issued under a multiple award contract (MAC) set-aside for exclusive competition among 8(a) Participants.”¹⁰ Not the competitive 8(a) task orders, only the sole source task orders. Note that the intended MAC would be set aside for only 8(a) Participants, whose size and status would be verified during the procurement process, and as part of the set-aside MAC process there would be an opportunity for competitors to protest the size and status of all the Participants in the 8(a) exclusive MAC, such as the STARS III GWAC. That process protects the protest rights of any challengers, and based on long-standing contract rules, the size and status of the contract holder should continue to qualify as small during the life of the contract. However, SBA sees a need to add an “extra” check only on those types of task orders.

⁷ U.S. Chamber of Commerce Foundation. (March 2017). *The Regulatory Impact on Small Business: Complex.Cumbersome.Costly*

⁸ Id. pg 4

⁹ United States, Small Business Administration. RIN 3245-AH70 “Ownership and Contractual Assistance Requirements for the 8(a) Business Development Program.” 88 Fed. Reg 81, 26168 (Sept 9, 2022).

¹⁰ Id.

This ability to protest had been a concern for SBA in unrestricted MACs, stating “A firm’s status as a small business does not generally affect whether the firm does or does not qualify for the award of an unrestricted multiple award contract.”¹¹ And that “competitors are very unlikely to protest the size of a concern that self-certifies as small for an unrestricted” MAC. But this additional rule targets set-aside contracts where the size and status of the bidders is thoroughly checked before contract award. This excessive regulation will cause many small businesses that actually get onto a category management vehicle reserved for 8(a) Participants to lose the ability to market themselves for a direct award because they have been successful and grown during the length of the contract term. A rule which most find counter to longstanding contract rules, and is just one example of excessive regulation strangling small business participation in category management vehicles.

Ho-Chunk Inc. recommends that the Subcommittee address this rule and others like it to reduce the regulatory burden on small businesses, one of the many reasons that small businesses are either leaving or not entering the government contracting arena.

Thank you for your consideration of our comments, and please do not hesitate to contact us if you would like any further information.

¹¹ Id.