S. 4623

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 and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SECTION 2. FINDINGS.

Congress makes the following findings:

(1) The Government Accountability Office (GAO) has conducted a trend analysis of govern-
mentwide contracting for each of the last several fiscal years. These analyses show that the Federal dollars obligated through contracts has been steadily increasing.

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

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

(4) Rapid technological developments and increased Government demand create a need for a Federal acquisition workforce with an understanding of technology and related procurement considerations.

(5) Recruitment and retention of procurement staff are chief concerns for Federal agencies, which are facing a shortage of procurement professionals despite growing contract spending and the need for a faster procurement process to keep pace with technological advancements.

(6) Federal agencies are challenged to shorten the procurement cycle to timely meet agency technology requirements. Unlike in the past, procurements that take years from requirements develop-
ment to implementation may be obsolete by the time
they are fielded.

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

SEC. 3. DEFINITIONS.

In this Act:

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

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

(3) CROSS-FUNCTIONAL.—The term “cross-
functional” means a structure in which individuals
with different functional expertise or from different
areas of an organization work together as a team.
(4) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given the term in section 133 of title 41, United States Code.

(5) EXPERIENTIAL LEARNING.—The term “experiential learning” means on-the-job experiences or simulations that serve to enhance workforce professional skills.

(6) INFORMATION AND COMMUNICATIONS TECHNOLOGY.—The term “information and communications technology” has the meaning given the term in subpart 2.101 of the Federal Acquisition Regulation and includes associated services.

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

(8) RELEVANT COMMITTEES OF CONGRESS.—The term “relevant committees of Congress” means the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on
Oversight and Reform of the House of Representatives.

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

SEC. 4. ACQUISITION WORKFORCE.

(a) PATHWAYS TO PROCUREMENT PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Administrator, in coordination with the Federal Acquisition Institute and the Office of Personnel Management, as necessary, shall pilot a program for entry of junior and mid-career professionals to the General Schedule Contracting series (GS–1102) workforce, by—

(A) considering the inclusion of program participants from other job series and fields, including veterans, military spouses, and private sector procurement professionals;

(B) providing alternatives to education and training requirements for entry into the General Schedule Contracting series (GS–1102) workforce, such as allowing for use of educational
credits in a technical discipline relevant to agency procurement, such as information and communications technology and scientific and engineering disciplines;

(C) providing pathways to reciprocity or fulfillment of certification requirements for Department of Defense professional contracting certification holders and commercial sector acquisition certification holders, such as certified professional contract managers and certified Federal contract managers; and

(D) providing a capstone class or experience and relevant mentorship opportunities.

(2) BRIEFING.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall provide to the relevant committees of Congress a briefing on implementation of the pilot program and any recommendations related to expansion or extension.

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

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

(c) TRAINING ON INFORMATION AND COMMUNICATIONS TECHNOLOGY ACQUISITION.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Federal Acquisition Institute, in coordination with the Administrator, the Administrator of General Services, the Chief Information Officers Council, and the United States Digital Service shall develop and implement or otherwise provide a cross-functional information and communications technology acquisition training program to acquisition workforce members involved in acquiring information and communications technology. The training shall—

(A) include learning objectives related to market research and communicating with industry, developing requirements, acquisition planning, and awarding and administering contracts for information and communications technology;

(B) include learning objectives encouraging use of small business programs to acquire information and communications technology;
(C) include learning objectives encouraging
the use of commercial or commercially available
off-the-shelf (COTS) technologies to the greatest extent practicable;

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

(E) include experiential learning opportunities;

(F) include continuous learning recommendations and resources to keep the skills
of acquisition workforce members current; and

(G) be made available to acquisition workforce members designated by a Chief Acquisition Officer, Senior Procurement Executive, or Head of the Contracting Activity to participate in the training program.

(2) REPORT.—Not later than 18 months after
the date of the enactment of this Act, the Director
of the Federal Acquisition Institute shall provide to
the relevant committees of Congress, the Chief Acquisition Officers Council and the Chief Information Officers Council—

(A) a briefing outlining the Director’s progress in developing and implementing or
otherwise providing the information and communications technology acquisition training described in paragraph (1); and

(B) a list of any congressionally mandated acquisition training that the Director determines to be outdated or no longer necessary for other reasons.

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

SEC. 5. INNOVATIVE PROCUREMENT METHODS.

(a) GUIDANCE ON INNOVATIVE PROCUREMENT METHODS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall issue guidance to inform executive agencies on the availability of streamlined and alternative procurement methods for procurement of information and communications technology, including—

(1) simplified procedures for certain commercial products and commercial services in accordance with subpart 13.5 of the Federal Acquisition Regulation, prize competitions under the America COMPETES Reauthorization Act of 2010 (Public Law 111–358), commercial solutions opening authorities as provided in this section or under separate authority, the
Small Business Innovation Research Program, and joint venture partnerships through agreement with National Technical Innovation Service within the Department of Commerce; and

(2) information on appropriate use, examples and templates, and any other information determined relevant by the Administrator to assist contracting officers and other members of the acquisition workforce in utilizing the procedures described in paragraph (1).

(b) Expansion of Commercial Solutions Opening Authority.—Section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 41 U.S.C. 3301 note) is amended—

(1) in subsection (a)—

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

“(C) The head of an executive agency approved for the program, on a pilot or permanent basis, by the Director of the Office of Management and Budget.”; and

(B) in paragraph (3), by adding at the end the following new subparagraph:
“(C) An executive agency approved for the program by the Director of the Office of Management and Budget.”;

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

(3) by amending subsection (e) to read as follows:

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

“(1) developing and sharing best practices;

“(2) gathering information on the implementation of the authority and related policy issues; and

“(3) informing the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives on the use of the authority.”;

(4) by amending subsection (f) to read as follows:

“(f) DEFINITIONS.—In this section—
“(1) the term ‘commercial product’ includes a commercial product or a commercial service, as those terms are defined in sections 103 and 103a, respectively, of title 41, United States Code; and

“(2) the term ‘innovative’ means—

“(A) any new technology, process, or method, including research and development; or

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

(5) by striking subsection (g);

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

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

(e) Clerical Amendment.—The table of contents in section 2(b) of such Act is amended by striking the item relating to section 880 and inserting the following new item:

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

SEC. 6. ADDRESSING BARRIERS TO ENTRY IN FEDERAL CONTRACTING.

(a) Use of Past Performance.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall issue guidance, including examples and templates where appropriate, on—
(1) when a wider range of projects, such as commercial or non-government, as well as Government projects, should be accepted as relevant past performance, in order to have access to a wider pool of eligible firms with capability to perform a requirement, such as a requirement without much precedent; and

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

(b) ADDRESSING BARRIERS TO ENTRY.—

(1) ADDRESSING BARRIERS TO ENTRY WORKING GROUP.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall convene a working group or an appropriate existing body (in this section referred to as the “working group”), to make recommendations to reduce barriers to entry for entities seeking to do business with the Federal Government.

(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:

(A) The General Services Administration.
(B) The Department of Homeland Security.

(C) The Department of Commerce.

(D) The Department of Defense.

(E) The Department of Health and Human Services.

(F) The Small Business Administration.

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

(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.

(4) EXAMINATION OF ACTIONS.—The working group shall consider the input obtained under paragraph (3) and any other information determined to be appropriate by the Administrator to identify legislative, regulatory, and other actions to foster more resilient supply chains, provide access to a wider
pool of qualified vendors, and increase opportunities for participation of new, small, and nontraditional businesses in the procurement process, in addition to addressing other barriers.

(5) IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Administrator shall, in consultation with the Federal Acquisition Regulatory Council, the Chief Acquisition Officers Council, the working group, and other agencies as appropriate, implement the regulatory and other non-legislative actions identified under paragraph (4) to address barriers to entry for entities seeking to participate in Federal Government procurement.

(6) BRIEFING.—Not later than two years after the date of the enactment of this Act, the Administrator shall brief the relevant committees of Congress on the legislative actions identified under paragraph (4), and the actions implemented under paragraph (5).

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

(1) in subparagraph (B) by striking “the amount set forth in section 3702(a)(1)(A) of title 10
as the amount is adjusted in accordance with applicable requirements of law” and inserting “$15,000,000”; and

(2) in subparagraph (C)—

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

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

(C) by striking clause (iv).

SEC. 7. INCENTIVIZING EMPLOYEE STOCK OWNERSHIP PLANS FOR BUSINESS GROWTH.

(a) Pilot Program To Use Noncompetitive Procedures for Certain Follow-On Contracts to Qualified Businesses Wholly-Owned Through an Employee Stock Ownership Plan (ESOP).—

(1) Establishment.—The Administrator may expand the pilot program authorized by section 874 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 10 U.S.C. 3204 note) for governmentwide use, including by coordinating as necessary with the Federal Acquisition Regulatory Council to make related amendments to the Federal Acquisition Regulation.

(2) Follow-On Contracts.—Notwithstanding the requirements of section 3301 of title 41, United
States Code, for purposes of carrying out a governmentwide ESOP pilot program established under paragraph (1), the products or services to be procured by an executive agency under a follow-on contract with a qualified business wholly-owned through an ESOP for the continued development, production, or provision of products or services that are the same as or substantially similar to the products or services procured under a prior contract may be procured through procedures other than competitive procedures if the performance of the qualified business on the prior contract was rated as satisfactory (or the equivalent) or better.

(3) LIMITATION.—A qualified business wholly-owned through an ESOP may have a single opportunity for award of a sole-source follow-on contract under this subsection, unless the senior procurement executive of the executive agency awarding the contract approves a waiver of such limitation.

(b) VERIFICATION AND REPORTING OF QUALIFIED BUSINESSES WHOLLY-OWNED THROUGH AN EMPLOYEE STOCK OWNERSHIP PLAN.—Under a pilot program established under this section, the Administrator shall establish procedures—
(1) for businesses to verify status as a qualified business wholly-owned through an ESOP for the purposes of this section by using existing Federal reporting mechanisms;

(2) for a qualified businesses wholly-owned through an ESOP to certify that not more than 50 percent of the amount paid under the contract will be expended on subcontracts, including similarly situated ESOPs if determined appropriate by the Administrator, subject to such necessary and reasonable waivers as the implementing guidance or regulations may prescribe; and

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

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