

117TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. PETERS (for himself and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on _____

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”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

9 (1) The Government Accountability Office
10 (GAO) has conducted a trend analysis of Govern-

1 ment-wide contracting for each of the last several
2 fiscal years. These analyses show that the Federal
3 dollars obligated through contracts has been steadily
4 increasing.

5 (2) Contract spending accounts for more than
6 80 percent of the Federal information technology
7 budget.

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

11 (4) Rapid technological developments and in-
12 creased Government demand create a need for a
13 Federal acquisition workforce with an understanding
14 of technology and related procurement consider-
15 ations.

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

22 (6) Federal agencies are challenged to shorten
23 the procurement cycle to timely meet agency tech-
24 nology requirements. Unlike in the past, procure-
25 ments that take years from requirements develop-

1 ment to implementation may be obsolete by the time
2 they are fielded.

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

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

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

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

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

1 (4) EXECUTIVE AGENCY.—The term “executive
2 agency” has the meaning given the term in section
3 133 of title 41, United States Code.

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

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

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

22 (8) RELEVANT COMMITTEES OF CONGRESS.—
23 The term “relevant committees of Congress” means
24 the Committee on Homeland Security and Govern-
25 mental Affairs of the Senate and the Committee on

1 Oversight and Reform of the House of Representa-
2 tives.

3 (9) SMALL BUSINESS.—The term “small busi-
4 ness” has the meaning given the term “small busi-
5 ness concern” in section 3 of the Small Business Act
6 (15 U.S.C. 632).

7 **SEC. 4. ACQUISITION WORKFORCE.**

8 (a) PATHWAYS TO PROCUREMENT PILOT PRO-
9 GRAM.—

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

18 (A) considering the inclusion of program
19 participants from other job series and fields, in-
20 cluding veterans, military spouses, and private
21 sector procurement professionals;

22 (B) providing alternatives to education and
23 training requirements for entry into the General
24 Schedule Contracting series (GS–1102) work-
25 force, such as allowing for use of educational

1 credits in a technical discipline relevant to
2 agency procurement, such as information and
3 communications technology and scientific and
4 engineering disciplines;

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

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

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

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

23 (b) EXPERIENTIAL LEARNING.—Not later than 1
24 year after the date of the enactment of this Act, the Fed-
25 eral Acquisition Institute shall incorporate experiential

1 learning into the training framework for the General
2 Schedule Contracting series (GS–1102).

3 (c) TRAINING ON INFORMATION AND COMMUNICA-
4 TIONS TECHNOLOGY ACQUISITION.—

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

16 (A) include learning objectives related to
17 market research and communicating with in-
18 dustry, developing requirements, acquisition
19 planning, and awarding and administering con-
20 tracts for information and communications
21 technology;

22 (B) include learning objectives encouraging
23 use of small business programs to acquire infor-
24 mation and communications technology;

1 (C) include learning objectives encouraging
2 the use of commercial or commercially available
3 off-the-shelf (COTS) technologies to the great-
4 est extent practicable;

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

8 (E) include experiential learning opportu-
9 nities;

10 (F) include continuous learning rec-
11 ommendations and resources to keep the skills
12 of acquisition workforce members current; and

13 (G) be made available to acquisition work-
14 force members designated by a Chief Acquisi-
15 tion Officer, Senior Procurement Executive, or
16 Head of the Contracting Activity to participate
17 in the training program.

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

24 (A) a briefing outlining the Director's
25 progress in developing and implementing or

1 otherwise providing the information and com-
2 munications technology acquisition training de-
3 scribed in paragraph (1); and

4 (B) a list of any congressionally mandated
5 acquisition training that the Director deter-
6 mines to be outdated or no longer necessary for
7 other reasons.

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

11 **SEC. 5. INNOVATIVE PROCUREMENT METHODS.**

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

19 (1) simplified procedures for certain commercial
20 products and commercial services in accordance with
21 subpart 13.5 of the Federal Acquisition Regulation,
22 prize competitions under the America COMPETES
23 Reauthorization Act of 2010 (Public Law 111–358),
24 commercial solutions opening authorities as provided
25 in this section or under separate authority, the

1 Small Business Innovation Research Program, and
2 joint venture partnerships through agreement with
3 National Technical Innovation Service within the
4 Department of Commerce; and

5 (2) information on appropriate use, examples
6 and templates, and any other information deter-
7 mined relevant by the Administrator to assist con-
8 tracting officers and other members of the acquisi-
9 tion workforce in utilizing the procedures described
10 in paragraph (1).

11 (b) EXPANSION OF COMMERCIAL SOLUTIONS OPEN-
12 ING AUTHORITY.—Section 880 of the National Defense
13 Authorization Act for Fiscal Year 2017 (Public Law 114–
14 328; 41 U.S.C. 3301 note) is amended—

15 (1) in subsection (a)—

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

18 “(C) The head of an executive agency ap-
19 proved for the program, on a pilot or perma-
20 nent basis, by the Director of the Office of
21 Management and Budget.”; and

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

1 “(C) An executive agency approved for the
2 program by the Director of the Office of Man-
3 agement and Budget.”;

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

6 (3) by amending subsection (e) to read as fol-
7 lows:

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

15 “(1) developing and sharing best practices;

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

18 “(3) informing the Committee on Homeland Se-
19 curity and Governmental Affairs of the Senate and
20 the Committee on Oversight and Reform of the
21 House of Representatives on the use of the author-
22 ity.”;

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

25 “(f) DEFINITIONS.—In this section—

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

5 “(2) the term ‘innovative’ means—

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

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

10 (5) by striking subsection (g);

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

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

14 (c) CLERICAL AMENDMENT.—The table of contents
15 in section 2(b) of such Act is amended by striking the
16 item relating to section 880 and inserting the following
17 new item:

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

18 **SEC. 6. ADDRESSING BARRIERS TO ENTRY IN FEDERAL**
19 **CONTRACTING.**

20 (a) USE OF PAST PERFORMANCE.—Not later than
21 1 year after the date of the enactment of this Act, the
22 Administrator shall issue guidance, including examples
23 and templates where appropriate, on—

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

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

11 (b) ADDRESSING BARRIERS TO ENTRY.—

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

20 (2) MEMBERSHIP.—The working group con-
21 vened under paragraph (1) shall be chaired by the
22 Administrator or a designee of the Administrator
23 and include, at a minimum, representatives from:

24 (A) The General Services Administration.

1 (B) The Department of Homeland Security.
2 rity.

3 (C) The Department of Commerce.

4 (D) The Department of Defense.

5 (E) The Department of Health and
6 Human Services.

7 (F) The Small Business Administration.

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

11 (3) CONSULTATION.—The working group shall
12 obtain input from the public, including from the
13 Procurement Technical Assistance Center (PTAC)
14 network and from other industry representatives, on
15 ways in which Federal procurement policies and reg-
16 ulations are obsolete, overly burdensome or restric-
17 tive, and serve to create barriers to participation in
18 Federal contracting or unnecessarily increase bid
19 and proposal costs.

20 (4) EXAMINATION OF ACTIONS.—The working
21 group shall consider the input obtained under para-
22 graph (3) and any other information determined to
23 be appropriate by the Administrator to identify leg-
24 islative, regulatory, and other actions to foster more
25 resilient supply chains, provide access to a wider

1 pool of qualified vendors, and increase opportunities
2 for participation of new, small, and nontraditional
3 businesses in the procurement process, in addition to
4 addressing other barriers.

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

15 (6) BRIEFING.—Not later than two years after
16 the date of the enactment of this Act, the Adminis-
17 trator shall brief the relevant committees of Con-
18 gress on the legislative actions identified under para-
19 graph (4), and the actions implemented under para-
20 graph (5).

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

24 (1) in subparagraph (B) by striking “the
25 amount set forth in section 3702(a)(1)(A) of title 10

1 as the amount is adjusted in accordance with appli-
2 cable requirements of law” and inserting
3 “\$15,000,000”; and

4 (2) in subparagraph (C)—

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

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

9 (C) by striking clause (iv).

10 **SEC. 7. INCENTIVIZING EMPLOYEE STOCK OWNERSHIP**
11 **PLANS FOR BUSINESS GROWTH.**

12 (a) **PILOT PROGRAM TO USE NONCOMPETITIVE PRO-**
13 **CEDURES FOR CERTAIN FOLLOW-ON CONTRACTS TO**
14 **QUALIFIED BUSINESSES WHOLLY-OWNED THROUGH AN**
15 **EMPLOYEE STOCK OWNERSHIP PLAN (ESOP).—**

16 (1) **ESTABLISHMENT.**—The Administrator may
17 expand the pilot program authorized by section 874
18 of the National Defense Authorization Act for Fiscal
19 Year 2022 (Public Law 117–81; 10 U.S.C. 3204
20 note) for Government-wide use, including by coordi-
21 nating as necessary with the Federal Acquisition
22 Regulatory Council to make related amendments to
23 the Federal Acquisition Regulation.

24 (2) **FOLLOW-ON CONTRACTS.**—Notwithstanding
25 the requirements of section 3301 of title 41, United

1 States Code, for purposes of carrying out a Govern-
2 ment-wide ESOP pilot program established under
3 paragraph (1), the products or services to be pro-
4 cured by an executive agency under a follow-on con-
5 tract with a qualified business wholly-owned through
6 an ESOP for the continued development, production,
7 or provision of products or services that are the
8 same as or substantially similar to the products or
9 services procured under a prior contract may be pro-
10 cured through procedures other than competitive
11 procedures if the performance of the qualified busi-
12 ness on the prior contract was rated as satisfactory
13 (or the equivalent) or better.

14 (3) LIMITATION.—A qualified business wholly-
15 owned through an ESOP may have a single oppor-
16 tunity for award of a sole-source follow-on contract
17 under this subsection, unless the senior procurement
18 executive of the executive agency awarding the con-
19 tract approves a waiver of such limitation.

20 (b) VERIFICATION AND REPORTING OF QUALIFIED
21 BUSINESSES WHOLLY-OWNED THROUGH AN EMPLOYEE
22 STOCK OWNERSHIP PLAN.—Under a pilot program estab-
23 lished under this section, the Administrator shall establish
24 procedures—

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

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

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

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