



January 11, 2023

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Reopening of Comment Period for Share Repurchase Disclosure Modernization (File Number S7-21-21)

Dear Ms. Countryman:

The Professional Services Council (PSC) appreciates the opportunity to submit comments in response to the *Federal Register* notice of December 12, 2022, from the Securities and Exchange Commission regarding the Reopening of the Comment Period for Share Repurchase Disclosure Modernization (File Number S7-21-21).

PSC is an industry association with more than 440 member companies—small, mid-sized, and large—that provide much-needed technology and professional services to all federal agencies. These companies and their workers throughout America and around the world are as committed to U.S. Government missions as are federal civilian and uniformed personnel themselves. PSC supports our members and their federal customers by promoting effective government practices and policies, improvements in federal contracting, and constructive dialogue between government and industry.

While PSC supports and aligns itself with comments submitted by other trade associations on behalf of companies in the broader national commercial market, the PSC comments focus on the unique and vital interests of the entire federal government in the financial health and stability of government contractor companies.

Of particular relevance to this proposed rule, it is worth noting that in any given year, fewer than 10 percent of PSC member companies are publicly traded. That said, a significantly larger proportion of these member companies have been and / or will be publicly traded at some point. Our comments therefore reflect both concerns regarding the actual impact of the Commission's proposed rule and the potential effects of the proposed rule on companies which may be considering a role in public capital markets.

Background

From the birth of the American republic, the U.S. federal government has relied on the private sector for the performance and support of most of its missions and functions. That reliance is present in each and every federal agency, and it continues to grow and change each year. Contracts obligations with the private sector in the just-completed fiscal year 2022 totaled more than \$700 billion, spread across at least 80,000 companies with prime federal government contracts and even more subcontractors, and employing millions of workers and subcontractors.

For most of these companies, the federal government IS the marketplace as many goods and services provided to the government often have no buyer in the commercial market. This monopsonist economic environment is not recognized in the proposed rule, nor are its effects considered in the rule or its accompanying analyses.

Private sector contractors offer many advantages to the federal government, including among other favorable characteristics: expanded access to workforce talent and skills; the capacity and capability to adjust rapidly to changing requirements; the ability to identify and incorporate innovation in technology, systems, and process into federal government operations; and the ability to surge resources and increase results without the time delays imposed by the annual federal budget process. However, those positive attributes require that government contractor firms have access to capital markets to deliver capability, capacity, and results. The federal government, with rare and limited exceptions, does not finance government contractors.

In order for a government contractor company to access needed capital or operating funds, it must offer a return commensurate with other opportunities for investment. Such a company must generate sufficient returns within a federal contract financing policy that is often inflexible, based on cost assumptions that were determined years in advance of contract award or performance, and unresponsive to (and often unaware of) the impact of current economic conditions.

Such returns on invested capital are further constrained by the many compliance and reporting requirements that are unique to the federal government, adding additional cost and time burdens on government contractor companies that are not borne in the overall national economy. These additional burdens are often rooted in important national interests and include tracking costs in ways that make no economic sense but provide assurances to taxpayers that their tax dollars have been well managed. These burdens therefore have the effect of making such companies less competitive in commercial markets, where non-contractor companies are free from the extra cost of those burdens.

The Commission's proposed rule would add to that burden, with no discernible benefit to the companies, their investors, or perhaps most importantly, the government agency customers that depend on contractors to execute their missions and support their functions.

Federal contractor companies, including those that are publicly traded, have a limited number of avenues available for them to provide returns on invested capital or even to reinvest those funds into their own business. Options—such as (1) investing in research and development for growth and future sales or (2) acquiring other companies to complement and / or strengthen their ability to bid on, win, and perform additional government contracts—are often limited by the federal government.

Other options, such as returning cash to investors through the payment of dividends, often create expectations by financial markets of a repetition of those payments in perpetuity. Failure to meet those expectations has demonstrable negative impact on share prices and company valuations.

A fourth option, repurchasing shares, is sometimes the only viable option for such government contractors.

Recommendations

In light of these unique market conditions, PSC offers the following comments.

With respect to the proposed rule, **the burden that would be placed on government contractors by daily reporting requirements would increase costs and offer no identified benefit.** Since many federal contractors are able to do business only with the government, their costs must be covered by their government customers. Adding this burden to publicly traded government contractor companies will make such firms less competitive and drive such firms into other forms of ownership. The result would be less visibility into the financial marketplace, not more.

With respect to the December 7, 2022, Supplemental Analysis and the questions posed in the December 12 Federal Register notice, PSC notes that **the time period covered in the analysis does not include the impact of inflations in 2021 and 2022, fails to recognize the impact of a tight labor market on costs and the resulting negative consequences on returns, and has no visible assessment of the volatility of projected future costs from inflation or labor market constraints.** These shortcomings make it difficult to assess the future validity of the analysis.

PSC recommends that consideration of finalizing the proposed rule be put on hold and that additional analysis should be conducted, incorporating current and projected future economic and labor market conditions. In addition, **PSC recommends additional analysis on the impact of the proposed rule on those federal contractor companies that are publicly traded today or that may become such in the future.**

Thank you for the opportunity to provide these comments. We stand ready to discuss them further at your convenience.

Yours respectfully,



David J. Berteau
President & CEO