

HR 1873 RH

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110th CONGRESS
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H. R. 1873
[Report No. 110-111, Parts I and II]

To reauthorize the programs and activities of the Small Business Administration relating to procurement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 17, 2007

Mr. BRALEY of Iowa (for himself, Mr. CHABOT, and Ms. VELAZQUEZ) introduced the following bill; which was referred to the Committee on Small Business

April 26, 2007

Reported with an amendment and referred to the Committee on Oversight and Government Reform for a period ending not later than May 4, 2007 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(m), rule X

[Strike out all after the enacting clause and insert the part printed in italic]

May 3, 2007

Additional sponsors: Mr. BARTLETT of Maryland, Mr. JOHNSON of Georgia, Ms. MOORE of Wisconsin, Mr. BUCHANAN, Mr. DAVID DAVIS of Tennessee, Ms. FALLIN, Mr. FORTENBERRY, Mr. HELLER of Nevada, Mrs. MUSGRAVE, Mr. WESTMORELAND, Mr. GRAVES, Mr. ELLSWORTH, Mr. SESTAK, Mr. SHULER, Mr. CUELLAR, Ms. CLARKE, Mr. JEFFERSON, Mr. ALTMIRE, Mr. GRIJALVA, Mr. SHUSTER, Mr. MICHAUD, Mr. LIPINSKI, Mr. REYES, Mr. LARSEN of Washington, Mr. GONZALEZ, Mr. JORDAN of Ohio, and Ms. BEAN

May 3, 2007

Reported from the Committee on Oversight and Government Reform with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on April 17, 2007]

A BILL

To reauthorize the programs and activities of the Small Business Administration relating to procurement, 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; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Small Business Fairness in Contracting Act'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Regulations.

TITLE I--CONTRACT BUNDLING

Sec. 101. Definitions of bundling of contract requirements and related terms.

Sec. 102. Justification.

Sec. 103. Appeals.

Sec. 104. Third-party review.

TITLE II--INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS

Sec. 201. Small business goal.

Sec. 202. Include overseas contracts in small business goal.

Sec. 203. Annual goal negotiation.

Sec. 204. Goal reasonableness.

Sec. 205. Usage of small companies in goal achievement.

Sec. 206. Annual plan for each agency explaining how agency will meet small business goals.

Sec. 207. Making small businesses the first choice.

Sec. 208. Uniform metric for subcontracting achievements.

Sec. 209. Subcontracting database.

Sec. 210. National database.

Sec. 211. Review of subcontracting plans.

Sec. 212. Agency obligation for fulfilling contracting goals.

TITLE III--PROTECTION OF TAXPAYERS FROM FRAUD

Sec. 301. Small business size protest notification.
Sec. 302. Review of national registry.
Sec. 303. Recertification of compliance with size standards and registration with Central Contractor Registry.

TITLE IV--AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

SEC. 2. REGULATIONS.

(a) In General- Not later than 180 days after the date of the enactment of this Act-

(1) the Administrator of the Small Business Administration shall promulgate regulations to implement this Act and the amendments made by this Act; and

(2) the Federal Acquisition Regulation shall be revised to implement this Act and the amendments made by this Act.

(b) Notice and Comment- The regulations required by subsection (a) shall be promulgated after opportunity for notice and comment as required by section 553(b) of title 5, United States Code.

TITLE I--CONTRACT BUNDLING

SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by amending subsection (o) to read as follows:

(o) Definitions of Bundling of Contract Requirements and Related Terms- For purposes of this Act:

(1) BUNDLED CONTRACT-

(A) IN GENERAL- The term 'bundled contract' means a contract or order that is entered into to meet procurement requirements that are consolidated in a bundling of contract requirements, without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.

(B) EXCEPTIONS- The term does not include--

(i) a contract or order with an aggregate dollar value below the dollar threshold specified in paragraph (4); or

(ii) a contract or order that is entered into to meet procurement requirements, all of which are exempted requirements under paragraph (5).

(2) BUNDLING OF CONTRACT REQUIREMENTS-

`(A) IN GENERAL- The term `bundling of contract requirements' means the use of any bundling methodology to satisfy 2 or more procurement requirements for new or existing goods or services, including any construction services, that is likely to be unsuitable for award to a small business concern due to--

`(i) the diversity, size, or specialized nature of the elements of the performance specified;

`(ii) the aggregate dollar value of the anticipated award;

`(iii) the geographical dispersion of the contract or order performance sites; or

`(iv) any combination of the factors described in clauses (i), (ii), and (iii).

`(B) EXCEPTIONS- The term does not include--

`(i) the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold specified in paragraph (4); or

`(ii) the use of a bundling methodology to meet procurement requirements, all of which are exempted requirements under paragraph (5).

`(3) BUNDLING METHODOLOGY- The term `bundling methodology' means--

`(A) a solicitation to obtain offers for a single contract or order, or a multiple award contract or order;

`(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract or order; or

`(C) the creation of any new procurement requirement that permits a consolidation of contract or order requirements.

`(4) DOLLAR THRESHOLD- The term `dollar threshold' means--

`(A) \$65,000,000, if solely for construction services; and

`(B) \$1,500,000, in all other cases.

`(5) EXEMPTED REQUIREMENTS- The term `exempted requirement' means one or more of the following:

`(A) A procurement requirement solely for items that are not commercial items (as the term `commercial item' is defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

`(B) A procurement requirement with respect to which a determination that it is unsuitable for award to a small business concern has previously been made by the agency. However, the Administrator shall have authority to review and reverse such a determination for purposes of this paragraph and, if the Administrator does reverse that determination, the term `exempted requirement' shall not apply to that procurement requirement.

“(6) PROCUREMENT REQUIREMENT- The term ‘procurement requirement’ means a determination by an agency that a specified good or service is needed to satisfy the mission of the agency.’.

SEC. 102. JUSTIFICATION.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended--

(1) by striking ‘is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely’ and inserting ‘would now be combined with other requirements for goods and services’;

(2) by striking ‘(2) why delivery schedules’ and inserting ‘(2) the names, addresses and size of the incumbent contract holders; (3) a description of the industries that might be interested in bidding on the contract requirements; (4) the number of small businesses listed in the industry categories that could be excluded from future bidding if the contract is combined or packaged; (5) why delivery schedules’;

(3) by striking ‘(3) why the proposed acquisition’ and inserting ‘(6) why the proposed acquisition’;

(4) by striking ‘(4) why construction’ and inserting ‘(7) why construction’;

(5) by striking ‘(5) why the agency’ and inserting ‘(8) why the agency’;

(6) by striking ‘justified.’ and inserting ‘justified. The statement shall also set forth the proposed procurement strategy required by subsection (e) and, if applicable, the specifications required by subsection (e)(3).

Concurrently, the statement shall be made available to the public, including through dissemination in the Federal contracting opportunities database.’; and

(7) by inserting after ‘prime contracting opportunities.’ the following: ‘If no notification of the procurement and accompanying statement is received, but the Administrator determines that there is cause to believe the contract combines requirements or a contract (single or multiple award) or task or delivery order for construction services or includes unjustified bundling, then the Administrator can demand that such a statement of work goods or services be completed by the procurement activity and sent to the Procurement Center Representative and the solicitation process postponed for at least 10 days to allow the Administrator to review the statement and make recommendations as described in this section before the procurement is continued.’.

SEC. 103. APPEALS.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended--

(1) by striking ‘If a proposed procurement includes in its statement’ and inserting ‘If a proposed procurement would negatively affect one or more small business concerns, or if a proposed procurement includes in its statement’; and

(2) by inserting before `Whenever the Administration and the contracting procurement agency fail to agree,' the following: `If a small business concern would be adversely affected, directly or indirectly, by the procurement as proposed, and that small business concern or a trade association on behalf of that small business concern so requests, the Administrator may, in the Administrator's discretion, take action to further the interests of that small business concern.'.

SEC. 104. THIRD-PARTY REVIEW.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by striking the sentence beginning `Whenever the Administration and the contracting procurement agency fail to agree,' and inserting the following: `Whenever the Administrator and the contracting procurement agency fail to agree, the Administrator shall submit the matter to the Administrator of the Office of Federal Procurement Policy within the Office of Management and Budget, who shall render his decision regarding the matter not later than 10 days after receiving the matter.'.

TITLE II--INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS

SEC. 201. SMALL BUSINESS GOAL.

Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking `23 percent' and inserting `30 percent'.

SEC. 202. INCLUDE OVERSEAS CONTRACTS IN SMALL BUSINESS GOAL.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by adding at the end the following:

`(3) The procurement goals required by this subsection apply to all procurement contracts, without regard to whether the contract is for work within or outside the United States.'.

SEC. 203. ANNUAL GOAL NEGOTIATION.

Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking `The President shall annually establish Government-wide goals for procurement contracts' and inserting `The President shall before the close of each fiscal year establish new Government-wide procurement goals for the following fiscal year for procurement contracts'.

SEC. 204. GOAL REASONABLENESS.

Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking `Notwithstanding the Government-wide goal, each agency shall have an annual goal' and inserting `Each agency shall have an annual goal, not lower than the Government-wide goal,'.

SEC. 205. USAGE OF SMALL COMPANIES IN GOAL ACHIEVEMENT.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by adding at the end the following:

`(4) For purposes of this subsection and subsection (h), a small business concern shall be counted toward one additional category goal only, even if that small business concern otherwise qualifies under more than one category goal. In this paragraph, the term `category goal' means a goal described in paragraph (2).'

SEC. 206. ANNUAL PLAN FOR EACH AGENCY EXPLAINING HOW AGENCY WILL MEET SMALL BUSINESS GOALS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by adding at the end the following:

`(5) Before the beginning of each fiscal year, the head of each Federal agency shall submit to the Administrator of the Small Business Administration and to Congress a detailed plan explaining how the agency intends to meet the small business goals under this subsection that apply to that agency for that fiscal year.'

SEC. 207. MAKING SMALL BUSINESSES THE FIRST CHOICE.

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended--

(1) in paragraph (1)--

(A) by inserting `or order' after `Each contract'; and

(B) by striking `\$100,000' and insert `the Simplified Acquisition Threshold'; and

(2) in paragraph (3), by striking `subsection (a) of section 8' and inserting `section 8, 31, or 36'.

SEC. 208. UNIFORM METRIC FOR SUBCONTRACTING ACHIEVEMENTS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

`(12) In carrying out this subsection, the Administrator shall require each prime contractor to report small business subcontract usage at all tiers based on the percentage of the total dollar amount of the contract award.'

SEC. 209. SUBCONTRACTING DATABASE.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

“(13) In carrying out this subsection, the Administrator shall develop and maintain a password-protected database that will enable the Administration to assist small businesses in marketing to large corporations that have not achieved their small business goals.’.

SEC. 210. NATIONAL DATABASE.

The Administrator of the Small Business Administration shall ensure that whenever a small business enters its information in the Central Contractor Registry, or any successor to that registry, the Administrator contacts that business within 30 days regarding the likelihood of Federal contracting opportunities. The Administrator shall ensure that each small business that so registers is, for each industry code entered by that small business, provided with the total dollar value of government contract awards to small businesses for that industry.

SEC. 211. REVIEW OF SUBCONTRACTING PLANS.

Not later than 120 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall, after an opportunity for notice and comment, prescribe regulations to govern the Administrator's review of subcontracting plans, including standards for determining good faith effort in compliance with the subcontracting plans.

SEC. 212. AGENCY OBLIGATION FOR FULFILLING CONTRACTING GOALS.

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended by adding at the end the following:

“(4) At the conclusion of each fiscal year, the head of each Federal agency shall submit to Congress a report specifying the percentage of contracts awarded by that agency for that fiscal year that were awarded to small business concerns. If the percentage is less than 30 percent, the head of the agency shall, in the report, explain why the percentage is less than 30 percent and what will be done to ensure that the percentage for the following fiscal year will not be less than 30 percent.’.

TITLE III--PROTECTION OF TAXPAYERS FROM FRAUD

SEC. 301. SMALL BUSINESS SIZE PROTEST NOTIFICATION.

(a) In General- The Administrator of the Small Business Administration shall work with appropriate Federal agencies to ensure that whenever a business concern is awarded a contract on the basis that it qualifies as small and then is

determined not to qualify as small, a notification of those facts (that an award was made on such a basis, and that such a determination was made) shall be placed adjacent to that concern's listing in the Central Contractor Registry (or any successor to that registry).

(b) Comptroller General Certification- The Administrator shall, in making any report of small business goal accomplishments, qualify the accomplishments as 'estimated', until the Administrator obtains from the Comptroller General the Comptroller General's certification that there are no data integrity issues with respect to the national repository of contract award information known as Federal Procurement Data System-Next Generation (FPDS-NG), or any successor to that repository.

(c) Awards to Large Businesses- For each Federal agency, the Inspector General of that agency shall, on an annual basis, submit to Congress a report on the number and dollar value of contract awards that were coded as awards to small business concerns but in fact were made to businesses that did not qualify as small business concerns.

SEC. 302. REVIEW OF NATIONAL REGISTRY.

The Administrator of the Small Business Administration shall ensure, on a biannual basis, that an independent audit is performed of the Central Contractor Registry, or any successor to that registry, and that the Dynamic Small Business Search portion of the registry, or any successor to that portion of the registry, is purged of any businesses that are not in fact small businesses. If a business that has been so purged attempts, while not in fact a small business, to re-register, that business is subject to debarment as a Federal contractor and is further subject to penalties outlined in section 16 of the Small Business Act (15 U.S.C. 645).

SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE STANDARDS AND REGISTRATION WITH CENTRAL CONTRACTOR REGISTRY.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

(5) Recertification-

(A) IN GENERAL- If a business concern is awarded a contract because of a standard by which it is determined to be a small business concern, and the business concern is close to exceeding that standard at the time the award is made, then the business concern must, annually after the date of the award, recertify to the agency awarding the contract whether it meets that standard.

(B) 'CLOSE TO EXCEEDING'- For purposes of subparagraph (A), a business concern is close to exceeding--

*`(i) a number-of-employees standard if the number of employees of the business concern is 95 percent or more of the maximum number of employees allowed under the standard; and
`(ii) a dollar-volume-of-business standard if the dollar volume of business is 80 percent or more of the maximum dollar volume allowed under the standard.*

`(6) Registry- For a business concern to be awarded a contract because of a standard by which it is determined to be a small business concern, the business concern must, annually after the end of the fiscal year used by the business concern, update its listing in the Central Contractor Registry.'

TITLE IV--AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the `Small Business Fairness in Contracting Act'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Regulations.

TITLE I--CONTRACT BUNDLING

Sec. 101. Definitions of bundling of contract requirements and related terms.

Sec. 102. Justification.

Sec. 103. Appeals.

Sec. 104. Review.

TITLE II--INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS

Sec. 201. Small business goal.

Sec. 202. Annual goal negotiation.

Sec. 203. Usage of small companies in goal achievement.

Sec. 204. Annual plan for each agency explaining how agency will meet small business goals.

Sec. 205. Making small businesses the first choice.

Sec. 206. Uniform metric for subcontracting achievements.

Sec. 207. Subcontracting database.

Sec. 208. National database.

- Sec. 209. Review of subcontracting plans.
- Sec. 210. Agency obligation for fulfilling contracting goals.
- Sec. 211. Appropriate limits on value of sole source contracts.

TITLE III--PROTECTION OF TAXPAYERS FROM FRAUD

- Sec. 301. Small business size protest notification.
- Sec. 302. Review of national registry.
- Sec. 303. Recertification of compliance with size standards and registration with Central Contractor Registry.

TITLE IV--AUTHORIZATION OF APPROPRIATIONS

- Sec. 401. Authorization of appropriations.

SEC. 2. REGULATIONS.

(a) In General- Not later than 180 days after the date of the enactment of this Act-

(1) the Administrator of the Small Business Administration shall promulgate regulations to implement this Act and the amendments made by this Act; and

(2) the Federal Acquisition Regulation shall be revised to implement this Act and the amendments made by this Act.

(b) Notice and Comment- The regulations required by subsection (a) shall be promulgated after opportunity for notice and comment as required by section 553(b) of title 5, United States Code.

TITLE I--CONTRACT BUNDLING

SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by amending subsection (o) to read as follows:

(o) Definitions of Bundling of Contract Requirements and Related Terms- For purposes of this Act:

(1) BUNDLED CONTRACT-

(A) IN GENERAL- The term 'bundled contract' means a contract or order that is entered into to meet procurement requirements that are consolidated in a bundling of contract requirements, without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.

(B) EXCEPTIONS- The term does not include--

- `(i) a contract or order with an aggregate dollar value below the dollar threshold specified in paragraph (4); or
- `(ii) a contract or order that is entered into to meet procurement requirements, all of which are exempted requirements under paragraph (5).

`(2) BUNDLING OF CONTRACT REQUIREMENTS-

`(A) IN GENERAL- The term 'bundling of contract requirements' means the use of any bundling methodology to satisfy 2 or more procurement requirements for goods or services, including any construction services, previously supplied or performed under separate smaller contracts or orders that is likely to be unsuitable for award to a small business concern due to--

- `(i) the diversity, size, or specialized nature of the elements of the performance specified;
- `(ii) the aggregate dollar value of the anticipated award;
- `(iii) the geographical dispersion of the contract or order performance sites; or
- `(iv) any combination of the factors described in clauses (i), (ii), and (iii).

`(B) INCLUSION OF NEW FEATURES OR FUNCTIONS- A combination of contract requirements that would meet the definition of a bundling of contract requirements but for the addition of a procurement requirement with at least one new good or service shall be considered to be a bundling of contract requirements unless the new features or functions substantially transform the goods or services previously performed.

`(C) EXCEPTIONS- The term does not include--

- `(i) the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold specified in paragraph (5); or
- `(ii) the use of a bundling methodology to meet procurement requirements, all of which are exempted requirements under paragraph (6).

`(3) BUNDLING METHODOLOGY- The term 'bundling methodology' means--

- `(A) a solicitation to obtain offers for a single contract or order, or a multiple award contract or order; or
- `(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract or order.

`(4) SEPARATE SMALLER CONTRACT- The term 'separate smaller contract', with respect to bundling of contract requirements, means a contract or order that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

`(5) DOLLAR THRESHOLD- The term 'dollar threshold' means--

- `(A) \$65,000,000, if solely for construction services; and
- `(B) \$5,000,000, in all other cases.

`(6) EXEMPTED REQUIREMENTS- The term `exempted requirement' means a procurement requirement solely for items that are not commercial items (as the term `commercial item' is defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

`(7) PROCUREMENT REQUIREMENT- The term `procurement requirement' means a determination by an agency that a specified good or service is needed to satisfy the mission of the agency.'

SEC. 102. JUSTIFICATION.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended--

(1) by striking `(2) why delivery schedules' and inserting `(2) the names, addresses and size of the incumbent contract holders; (3) a description of the industries that might be interested in bidding on the contract requirements; (4) the number of small businesses listed in the industry categories that could be excluded from future bidding if the contract is combined or packaged; (5) why delivery schedules';

(2) by striking `(3) why the proposed acquisition' and inserting `(6) why the proposed acquisition';

(3) by striking `(4) why construction' and inserting `(7) why construction';

(4) by striking `(5) why the agency' and inserting `(8) why the agency';

(5) by striking `justified.' and inserting `justified. The statement shall also set forth the proposed procurement strategy required by subsection (e) and, if applicable, the specifications required by subsection (e)(3). The statement shall be made available to the public, including through dissemination in the Federal contracting opportunities database, concurrently with the issuance of the solicitation.'; and

(6) by inserting after `prime contracting opportunities.' the following: `If no notification of the procurement and accompanying statement is received, but the Administrator determines that there is cause to believe the contract combines requirements or a contract (single or multiple award) or task or delivery order for construction services or includes unjustified bundling, then the Administrator may request that such a statement of work goods or services be completed by the procurement activity and sent to the Procurement Center Representative and the solicitation process postponed for 10 days to allow the Administrator to review the statement and make recommendations as described in this section before the procurement is continued.'

SEC. 103. APPEALS.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by inserting before `Whenever the Administration and the contracting procurement agency fail to agree,' the following: `If a small business concern would be adversely affected, directly or indirectly, by the procurement as proposed, and that small business concern or a trade association on behalf of that small business

concern so requests, the Administrator may, in the Administrator's discretion, take action to further the interests of that small business concern.'

SEC. 104. REVIEW.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by striking the sentence beginning 'Whenever the Administration and the contracting procurement agency fail to agree,' and inserting the following: 'Whenever the Administration and the contracting procurement agency fail to agree, the Administrator shall submit the matter to the head of the agency for a determination. The head of the agency shall provide a written response to the Administrator. A copy of such response shall also be provided to the Committees on Small Business of the House of Representatives and Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.'

TITLE II--INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS

SEC. 201. SMALL BUSINESS GOAL.

(a) Government-Wide Goal- Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking '23 percent' and inserting '25 percent'.
(b) Goals for Small Disadvantaged Businesses and Women-Owned Businesses- Section 15(g)(1) of such Act is further amended by striking '5 percent' both places it appears and inserting '8 percent'.

SEC. 202. ANNUAL GOAL NEGOTIATION.

Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended by striking 'The President shall annually establish Government-wide goals for procurement contracts' and inserting 'The President shall before the close of each fiscal year establish new Government-wide procurement goals for the following fiscal year for procurement contracts'.

SEC. 203. USAGE OF SMALL COMPANIES IN GOAL ACHIEVEMENT.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by adding at the end the following:

'(4) For purposes of this subsection and subsection (h), a small business concern shall be counted toward one additional category goal only, even if that small business concern otherwise qualifies under more than one category goal. In this paragraph, the term 'category goal' means a goal described in paragraph (2).'

SEC. 204. ANNUAL PLAN FOR EACH AGENCY EXPLAINING HOW AGENCY WILL MEET SMALL BUSINESS GOALS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by adding at the end the following:

`(5) Before the beginning of each fiscal year, the head of each Federal agency shall submit to the Administrator of the Small Business Administration and to Congress a detailed plan explaining how the agency intends to meet the small business goals under this subsection that apply to that agency for that fiscal year.'

SEC. 205. MAKING SMALL BUSINESSES THE FIRST CHOICE.

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended--

(1) in paragraph (1), by striking '\$100,000' and inserting 'the Simplified Acquisition Threshold'; and

(2) in paragraph (3), by striking 'subsection (a) of section 8' and inserting 'section 8, 31, or 36'.

SEC. 206. UNIFORM METRIC FOR SUBCONTRACTING ACHIEVEMENTS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

`(12) In carrying out this subsection, the Administrator shall require each prime contractor to report small business subcontract usage at all tiers based on the percentage of the total dollar amount of the contract award.'

SEC. 207. SUBCONTRACTING DATABASE.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

`(13) In carrying out this subsection, the Administrator shall develop and maintain a password-protected database that will enable the Administration to assist small businesses in marketing to large corporations that have not achieved their small business goals.'

SEC. 208. NATIONAL DATABASE.

The Administrator of the Small Business Administration shall ensure that whenever a small business enters its information in the Central Contractor Registry, or any successor to that registry, the Administrator contacts that business within 30 days regarding the likelihood of Federal contracting opportunities. The Administrator shall ensure that each small business that so registers is, for each industry code entered by that small business, provided with

the total dollar value of government contract awards to small businesses for that industry.

SEC. 209. REVIEW OF SUBCONTRACTING PLANS.

Not later than 120 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall, after an opportunity for notice and comment, prescribe regulations to govern the Administrator's review of subcontracting plans, including standards for determining good faith effort in compliance with the subcontracting plans.

SEC. 210. AGENCY OBLIGATION FOR FULFILLING CONTRACTING GOALS.

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended by adding at the end the following:

“(4) At the conclusion of each fiscal year, the head of each Federal agency shall submit to Congress a report specifying the percentage of contracts awarded by that agency for that fiscal year that were awarded to small business concerns. If the percentage is less than 25 percent, the head of the agency shall, in the report, explain why the percentage is less than 25 percent and what will be done to ensure that the percentage for the following fiscal year will not be less than 25 percent.”

SEC. 211. APPROPRIATE LIMITS ON VALUE OF SOLE SOURCE CONTRACTS.

(a) Appropriate Limits- If a law is not enacted by December 31, 2007, revising the limits referred to in this subsection, the Administrator for Federal Procurement Policy, in consultation with the Administrator for Small Business, shall establish appropriate limits on the value of contracts awarded without the use of competitive procedures to participants in the program established by section 8(a) of the Small Business Act (15 USC 637(a)) that are not subject to the limits on the value of such contracts established by paragraph (1)(D) of section 8(a) of such Act.

(b) Consultation- In establishing any limit described in subsection (a). the Administrator for Federal Procurement Policy shall consult with representatives of the affected program participants. The Administrator shall also take into account--

- (1) any special circumstances and needs of the affected program participants; and
- (2) the advantages of promoting competition in Federal contracting.

TITLE III--PROTECTION OF TAXPAYERS FROM FRAUD

SEC. 301. SMALL BUSINESS SIZE PROTEST NOTIFICATION.

(a) In General- The Administrator of the Small Business Administration shall work with appropriate Federal agencies to ensure that whenever a business concern is awarded a contract on the basis that it qualifies as small and then is determined not to qualify as small, a notification of those facts (that an award was made on such a basis, and that such a determination was made) shall be placed adjacent to that concern's listing in the Central Contractor Registry (or any successor to that registry).

(b) Comptroller General Certification- The Administrator shall, in making any report of small business goal accomplishments, qualify the accomplishments as 'estimated', until the Administrator obtains from the Comptroller General the Comptroller General's certification that there are no data integrity issues with respect to the national repository of contract award information known as Federal Procurement Data System-Next Generation (FPDS-NG), or any successor to that repository.

(c) Awards to Large Businesses- For each Federal agency, the Inspector General of that agency shall, on an annual basis, submit to Congress a report on the number and dollar value of contract awards that were coded as awards to small business concerns but in fact were made to businesses that did not qualify as small business concerns.

SEC. 302. REVIEW OF NATIONAL REGISTRY.

The Administrator of the Small Business Administration shall ensure, on a biannual basis, that an independent audit is performed of the Central Contractor Registry, or any successor to that registry, and that the Dynamic Small Business Search portion of the registry, or any successor to that portion of the registry, is purged of any businesses that are not in fact small businesses. If a business that has been so purged attempts, while not in fact a small business, to re-register, that business is subject to debarment as a Federal contractor and is further subject to penalties outlined in section 16 of the Small Business Act (15 U.S.C. 645).

SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE STANDARDS AND REGISTRATION WITH CENTRAL CONTRACTOR REGISTRY.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

(5) Recertification-

(A) IN GENERAL- If a business concern is awarded a contract because of a standard by which it is determined to be a small business concern, and the business concern is close to exceeding that standard at the time the award is made, then the business concern must, annually after the date of the award, recertify to the agency awarding the contract whether it meets that standard.

(B) 'CLOSE TO EXCEEDING'- For purposes of subparagraph (A), a business concern is close to exceeding--

`(i) a number-of-employees standard if the number of employees of the business concern is 95 percent or more of the maximum number of employees allowed under the standard; and

`(ii) a dollar-volume-of-business standard if the dollar volume of business is 80 percent or more of the maximum dollar volume allowed under the standard.

`(6) Registry- For a business concern to be awarded a contract because of a standard by which it is determined to be a small business concern, the business concern must, annually after the end of the fiscal year used by the business concern, update its listing in the Central Contractor Registry. '.

TITLE IV--AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

Union Calendar No. 71

110th CONGRESS

1st Session

H. R. 1873

[Report No. 110-111, Parts I and II]

A BILL

To reauthorize the programs and activities of the Small Business Administration relating to procurement, and for other purposes.

May 3, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

END