

110TH CONGRESS  
1ST SESSION

# H. R. 1873

[Report No. 110-111, Part II]

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2007

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

APRIL 26, 2007

Referred 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

MAY —, 2007

Reported from the Committee on Oversight and Government Reform, with an amendment

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

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

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## A BILL

To reauthorize the programs and activities of the Small Business Administration relating to procurement, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the*  
 3 *“Small Business Fairness in Contracting Act”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 5 *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.*

6 **SEC. 2. REGULATIONS.**

7 (a) *IN GENERAL.*—*Not later than 180 days after the*  
 8 *date of the enactment of this Act—*

9 (1) *the Administrator of the Small Business Ad-*  
 10 *ministration shall promulgate regulations to imple-*

1        *ment this Act and the amendments made by this Act;*  
2        *and*

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

6        *(b) NOTICE AND COMMENT.—The regulations required*  
7        *by subsection (a) shall be promulgated after opportunity for*  
8        *notice and comment as required by section 553(b) of title*  
9        *5, United States Code.*

## 10        **TITLE I—CONTRACT BUNDLING**

### 11        **SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT RE-** 12                **QUIREMENTS AND RELATED TERMS.**

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

15                *“(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-*  
16        *QUIREMENTS AND RELATED TERMS.—For purposes of this*  
17        *Act:*

18                *“(1) BUNDLED CONTRACT.—*

19                        *“(A) IN GENERAL.—The term ‘bundled con-*  
20        *tract’ means a contract or order that is entered*  
21        *into to meet procurement requirements that are*  
22        *consolidated in a bundling of contract require-*  
23        *ments, without regard to its designation by the*  
24        *procuring agency or whether a study of the ef-*

1           *fects of the solicitation on civilian or military*  
2           *personnel has been made.*

3           “(B) *EXCEPTIONS.*—*The term does not in-*  
4           *clude—*

5                   “(i) *a contract or order with an aggre-*  
6                   *gate dollar value below the dollar threshold*  
7                   *specified in paragraph (4); or*

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

12           “(2) *BUNDLING OF CONTRACT REQUIREMENTS.*—

13                   “(A) *IN GENERAL.*—*The term ‘bundling of*  
14                   *contract requirements’ means the use of any bun-*  
15                   *dling methodology to satisfy 2 or more procure-*  
16                   *ment requirements for goods or services, includ-*  
17                   *ing any construction services, previously sup-*  
18                   *plied or performed under separate smaller con-*  
19                   *tracts or orders that is likely to be unsuitable for*  
20                   *award to a small business concern due to—*

21                           “(i) *the diversity, size, or specialized*  
22                           *nature of the elements of the performance*  
23                           *specified;*

24                           “(ii) *the aggregate dollar value of the*  
25                           *anticipated award;*

1                   “(iii) the geographical dispersion of the  
2                   contract or order performance sites; or

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

5                   “(B) *INCLUSION OF NEW FEATURES OR*  
6                   *FUNCTIONS.—A combination of contract require-*  
7                   *ments that would meet the definition of a bun-*  
8                   *dling of contract requirements but for the addi-*  
9                   *tion of a procurement requirement with at least*  
10                   *one new good or service shall be considered to be*  
11                   *a bundling of contract requirements unless the*  
12                   *new features or functions substantially transform*  
13                   *the goods or services previously performed.*

14                   “(C) *EXCEPTIONS.—The term does not in-*  
15                   *clude—*

16                   “(i) the use of a bundling methodology  
17                   for an anticipated award with an aggregate  
18                   dollar value below the dollar threshold speci-  
19                   fied in paragraph (5); or

20                   “(ii) the use of a bundling methodology  
21                   to meet procurement requirements, all of  
22                   which are exempted requirements under  
23                   paragraph (6).

24                   “(3) *BUNDLING METHODOLOGY.—The term ‘bun-*  
25                   *dling methodology’ means—*

1           “(A) a solicitation to obtain offers for a sin-  
2           gle contract or order, or a multiple award con-  
3           tract or order; or

4           “(B) a solicitation of offers for the issuance  
5           of a task or a delivery order under an existing  
6           single or multiple award contract or order.

7           “(4) *SEPARATE SMALLER CONTRACT.*—The term  
8           ‘separate smaller contract’, with respect to bundling  
9           of contract requirements, means a contract or order  
10          that has been performed by 1 or more small business  
11          concerns or was suitable for award to 1 or more small  
12          business concerns.

13          “(5) *DOLLAR THRESHOLD.*—The term ‘dollar  
14          threshold’ means—

15                 “(A) \$65,000,000, if solely for construction  
16                 services; and

17                 “(B) \$5,000,000, in all other cases.

18          “(6) *EXEMPTED REQUIREMENTS.*—The term ‘ex-  
19          empted requirement’ means a procurement require-  
20          ment solely for items that are not commercial items  
21          (as the term ‘commercial item’ is defined in section  
22          4(12) of the Office of Federal Procurement Policy Act  
23          (41 U.S.C. 403(12)).

24          “(7) *PROCUREMENT REQUIREMENT.*—The term  
25          ‘procurement requirement’ means a determination by

1        *an agency that a specified good or service is needed*  
2        *to satisfy the mission of the agency.”.*

3        **SEC. 102. JUSTIFICATION.**

4        *Section 15(a) of the Small Business Act (15 U.S.C.*  
5        *644(a)) is amended—*

6                *(1) by striking “(2) why delivery schedules” and*  
7                *inserting “(2) the names, addresses and size of the in-*  
8                *cumbent contract holders; (3) a description of the in-*  
9                *dustries that might be interested in bidding on the*  
10                *contract requirements; (4) the number of small busi-*  
11                *nesses listed in the industry categories that could be*  
12                *excluded from future bidding if the contract is com-*  
13                *bined or packaged; (5) why delivery schedules”;*

14                *(2) by striking “(3) why the proposed acquisi-*  
15                *tion” and inserting “(6) why the proposed acquisi-*  
16                *tion”;*

17                *(3) by striking “(4) why construction” and in-*  
18                *serting “(7) why construction”;*

19                *(4) by striking “(5) why the agency” and insert-*  
20                *ing “(8) why the agency”;*

21                *(5) by striking “justified.” and inserting “justi-*  
22                *fied. The statement shall also set forth the proposed*  
23                *procurement strategy required by subsection (e) and,*  
24                *if applicable, the specifications required by subsection*  
25                *(e)(3). The statement shall be made available to the*

1        *public, including through dissemination in the Fed-*  
2        *eral contracting opportunities database, concurrently*  
3        *with the issuance of the solicitation.”; and*

4                (6) by inserting after “prime contracting oppor-

5        *tunities.” the following: “If no notification of the pro-*  
6        *curement and accompanying statement is received,*  
7        *but the Administrator determines that there is cause*  
8        *to believe the contract combines requirements or a*  
9        *contract (single or multiple award) or task or deliv-*  
10        *ery order for construction services or includes unjusti-*  
11        *fied bundling, then the Administrator may request*  
12        *that such a statement of work goods or services be*  
13        *completed by the procurement activity and sent to the*  
14        *Procurement Center Representative and the sollicita-*  
15        *tion process postponed for 10 days to allow the Ad-*  
16        *ministrator to review the statement and make rec-*  
17        *ommendations as described in this section before the*  
18        *procurement is continued.”.*

19        **SEC. 103. APPEALS.**

20        *Section 15(a) of the Small Business Act (15 U.S.C.*  
21        *644(a)) is amended by inserting before “Whenever the Ad-*  
22        *ministration and the contracting procurement agency fail*  
23        *to agree,” the following: “If a small business concern would*  
24        *be adversely affected, directly or indirectly, by the procure-*  
25        *ment as proposed, and that small business concern or a*



1 *trade association on behalf of that small business concern*  
2 *so requests, the Administrator may, in the Administrator's*  
3 *discretion, take action to further the interests of that small*  
4 *business concern."*

5 **SEC. 104. REVIEW.**

6 *Section 15(a) of the Small Business Act (15 U.S.C.*  
7 *644(a)) is amended by striking the sentence beginning*  
8 *"Whenever the Administration and the contracting procure-*  
9 *ment agency fail to agree," and inserting the following:*  
10 *"Whenever the Administration and the contracting procure-*  
11 *ment agency fail to agree, the Administrator shall submit*  
12 *the matter to the head of the agency for a determination.*  
13 *The head of the agency shall provide a written response to*  
14 *the Administrator. A copy of such response shall also be*  
15 *provided to the Committees on Small Business of the House*  
16 *of Representatives and Senate, the Committee on Oversight*  
17 *and Government Reform of the House of Representatives,*  
18 *and the Committee on Homeland Security and Govern-*  
19 *mental Affairs of the Senate."*

1 **TITLE II—INCREASING THE NUM-**  
2 **BER OF SMALL BUSINESS**  
3 **CONTRACTS AND SUB-**  
4 **CONTRACTS**

5 **SEC. 201. SMALL BUSINESS GOAL.**

6 (a) *GOVERNMENT-WIDE GOAL.*—Section 15(g)(1) of  
7 the Small Business Act (15 U.S.C. 644(g)(1)) is amended  
8 by striking “23 percent” and inserting “25 percent”.

9 (b) *GOALS FOR SMALL DISADVANTAGED BUSINESSES*  
10 *AND WOMEN-OWNED BUSINESSES.*—Section 15(g)(1) of  
11 such Act is further amended by striking “5 percent” both  
12 places it appears and inserting “8 percent”.

13 **SEC. 202. ANNUAL GOAL NEGOTIATION.**

14 Section 15(g)(1) of the Small Business Act (15 U.S.C.  
15 644(g)(1)) is amended by striking “The President shall an-  
16 nually establish Government-wide goals for procurement  
17 contracts” and inserting “The President shall before the  
18 close of each fiscal year establish new Government-wide pro-  
19 curement goals for the following fiscal year for procurement  
20 contracts”.

21 **SEC. 203. USAGE OF SMALL COMPANIES IN GOAL ACHIEVE-**  
22 **MENT.**

23 Section 15(g) of the Small Business Act (15 U.S.C.  
24 644(g)) is amended by adding at the end the following:

1           “(4) For purposes of this subsection and subsection (h),  
2 a small business concern shall be counted toward one addi-  
3 tional category goal only, even if that small business con-  
4 cern otherwise qualifies under more than one category goal.  
5 In this paragraph, the term ‘category goal’ means a goal  
6 described in paragraph (2).”.

7 **SEC. 204. ANNUAL PLAN FOR EACH AGENCY EXPLAINING**  
8                           **HOW AGENCY WILL MEET SMALL BUSINESS**  
9                           **GOALS.**

10           Section 15(g) of the Small Business Act (15 U.S.C.  
11 644(g)) is amended by adding at the end the following:

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

18 **SEC. 205. MAKING SMALL BUSINESSES THE FIRST CHOICE.**

19           Section 15(j) of the Small Business Act (15 U.S.C.  
20 644(j)) is amended—

21                   (1) in paragraph (1), by striking “\$100,000”  
22                   and inserting “the Simplified Acquisition Threshold”;  
23                   and

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

1 **SEC. 206. UNIFORM METRIC FOR SUBCONTRACTING**  
2 **ACHIEVEMENTS.**

3 *Section 8(d) of the Small Business Act (15 U.S.C.*  
4 *637(d)) is amended by adding at the end the following:*

5 *“(12) In carrying out this subsection, the Adminis-*  
6 *trator shall require each prime contractor to report small*  
7 *business subcontract usage at all tiers based on the percent-*  
8 *age of the total dollar amount of the contract award.”.*

9 **SEC. 207. SUBCONTRACTING DATABASE.**

10 *Section 8(d) of the Small Business Act (15 U.S.C.*  
11 *637(d)) is amended by adding at the end the following:*

12 *“(13) In carrying out this subsection, the Adminis-*  
13 *trator shall develop and maintain a password-protected*  
14 *database that will enable the Administration to assist small*  
15 *businesses in marketing to large corporations that have not*  
16 *achieved their small business goals.”.*

17 **SEC. 208. NATIONAL DATABASE.**

18 *The Administrator of the Small Business Administra-*  
19 *tion shall ensure that whenever a small business enters its*  
20 *information in the Central Contractor Registry, or any suc-*  
21 *cessor to that registry, the Administrator contacts that busi-*  
22 *ness within 30 days regarding the likelihood of Federal con-*  
23 *tracting opportunities. The Administrator shall ensure that*  
24 *each small business that so registers is, for each industry*  
25 *code entered by that small business, provided with the total*

1 *dollar value of government contract awards to small busi-*  
2 *nesses for that industry.*

3 **SEC. 209. REVIEW OF SUBCONTRACTING PLANS.**

4 *Not later than 120 days after the date of the enactment*  
5 *of this section, the Administrator of the Small Business Ad-*  
6 *ministration shall, after an opportunity for notice and com-*  
7 *ment, prescribe regulations to govern the Administrator's*  
8 *review of subcontracting plans, including standards for de-*  
9 *termining good faith effort in compliance with the subcon-*  
10 *tracting plans.*

11 **SEC. 210. AGENCY OBLIGATION FOR FULFILLING CON-**  
12 **TRACTING GOALS.**

13 *Section 15(h) of the Small Business Act (15 U.S.C.*  
14 *644(h)) is amended by adding at the end the following:*

15 *“(4) At the conclusion of each fiscal year, the head of*  
16 *each Federal agency shall submit to Congress a report speci-*  
17 *fying the percentage of contracts awarded by that agency*  
18 *for that fiscal year that were awarded to small business con-*  
19 *cerns. If the percentage is less than 25 percent, the head*  
20 *of the agency shall, in the report, explain why the percent-*  
21 *age is less than 25 percent and what will be done to ensure*  
22 *that the percentage for the following fiscal year will not be*  
23 *less than 25 percent.”.*

1 **SEC. 211. APPROPRIATE LIMITS ON VALUE OF SOLE**  
2 **SOURCE CONTRACTS.**

3 (a) *APPROPRIATE LIMITS.*—If a law is not enacted by  
4 December 31, 2007, revising the limits referred to in this  
5 subsection, the Administrator for Federal Procurement Pol-  
6 icy, in consultation with the Administrator for Small Busi-  
7 ness, shall establish appropriate limits on the value of con-  
8 tracts awarded without the use of competitive procedures  
9 to participants in the program established by section 8(a)  
10 of the Small Business Act (15 USC 637(a)) that are not  
11 subject to the limits on the value of such contracts estab-  
12 lished by paragraph (1)(D) of section 8(a) of such Act.

13 (b) *CONSULTATION.*—In establishing any limit de-  
14 scribed in subsection (a), the Administrator for Federal  
15 Procurement Policy shall consult with representatives of the  
16 affected program participants. The Administrator shall also  
17 take into account—

18 (1) any special circumstances and needs of the  
19 affected program participants; and

20 (2) the advantages of promoting competition in  
21 Federal contracting.

22 **TITLE III—PROTECTION OF**  
23 **TAXPAYERS FROM FRAUD**

24 **SEC. 301. SMALL BUSINESS SIZE PROTEST NOTIFICATION.**

25 (a) *IN GENERAL.*—The Administrator of the Small  
26 Business Administration shall work with appropriate Fed-

1 eral agencies to ensure that whenever a business concern  
2 is awarded a contract on the basis that it qualifies as small  
3 and then is determined not to qualify as small, a notifica-  
4 tion of those facts (that an award was made on such a basis,  
5 and that such a determination was made) shall be placed  
6 adjacent to that concern's listing in the Central Contractor  
7 Registry (or any successor to that registry).

8 (b) *COMPTROLLER GENERAL CERTIFICATION.*—The  
9 Administrator shall, in making any report of small busi-  
10 ness goal accomplishments, qualify the accomplishments as  
11 “estimated”, until the Administrator obtains from the  
12 Comptroller General the Comptroller General's certification  
13 that there are no data integrity issues with respect to the  
14 national repository of contract award information known  
15 as *Federal Procurement Data System-Next Generation*  
16 (*FPDS-NG*), or any successor to that repository.

17 (c) *AWARDS TO LARGE BUSINESSES.*—For each Fed-  
18 eral agency, the Inspector General of that agency shall, on  
19 an annual basis, submit to Congress a report on the number  
20 and dollar value of contract awards that were coded as  
21 awards to small business concerns but in fact were made  
22 to businesses that did not qualify as small business con-  
23 cerns.

1 **SEC. 302. REVIEW OF NATIONAL REGISTRY.**

2       *The Administrator of the Small Business Administra-*  
3 *tion shall ensure, on a biannual basis, that an independent*  
4 *audit is performed of the Central Contractor Registry, or*  
5 *any successor to that registry, and that the Dynamic Small*  
6 *Business Search portion of the registry, or any successor*  
7 *to that portion of the registry, is purged of any businesses*  
8 *that are not in fact small businesses. If a business that has*  
9 *been so purged attempts, while not in fact a small business,*  
10 *to re-register, that business is subject to debarment as a*  
11 *Federal contractor and is further subject to penalties out-*  
12 *lined in section 16 of the Small Business Act (15 U.S.C.*  
13 *645).*

14 **SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE**  
15 **STANDARDS AND REGISTRATION WITH CEN-**  
16 **TRAL CONTRACTOR REGISTRY.**

17       *Section 3(a) of the Small Business Act (15 U.S.C.*  
18 *632(a)) is amended by adding at the end the following:*

19       “(5) *RECERTIFICATION.—*

20               “(A) *IN GENERAL.—If a business concern is*  
21 *awarded a contract because of a standard by which*  
22 *it is determined to be a small business concern, and*  
23 *the business concern is close to exceeding that stand-*  
24 *ard at the time the award is made, then the business*  
25 *concern must, annually after the date of the award,*



1       *recertify to the agency awarding the contract whether*  
2       *it meets that standard.*

3               “(B) ‘CLOSE TO EXCEEDING’.—For purposes of  
4       subparagraph (A), a business concern is close to ex-  
5       ceeding—

6               “(i) a number-of-employees standard if the  
7       number of employees of the business concern is  
8       95 percent or more of the maximum number of  
9       employees allowed under the standard; and

10              “(ii) a dollar-volume-of-business standard if  
11       the dollar volume of business is 80 percent or  
12       more of the maximum dollar volume allowed  
13       under the standard.

14              “(6) REGISTRY.—For a business concern to be award-  
15       ed a contract because of a standard by which it is deter-  
16       mined to be a small business concern, the business concern  
17       must, annually after the end of the fiscal year used by the  
18       business concern, update its listing in the Central Con-  
19       tractor Registry.”.

20       **TITLE IV—AUTHORIZATION OF**  
21       **APPROPRIATIONS**

22       **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

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

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1873

[Report No. 110-111, Part III]

## A BILL

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