

107TH CONGRESS
2^D SESSION

S. 2463

To amend title 10, United States Code, to restrict bundling of Department of Defense contract requirements that unreasonably disadvantages small businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2002

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to restrict bundling of Department of Defense contract requirements that unreasonably disadvantages small businesses, 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. CONSOLIDATION OF CONTRACT REQUIRE-**
4 **MENTS.**

5 (a) AMENDMENT TO TITLE 10.—

6 (1) IN GENERAL.—Chapter 141 of title 10,
7 United States Code, is amended by inserting after
8 section 2381 the following new section:

1 **“§ 2382. Consolidation of contract requirements: pol-**
2 **icy and restrictions**

3 “(a) POLICY.—The Secretary of Defense shall re-
4 quire the Secretary of each military department, the head
5 of each Defense Agency, and the head of each Department
6 of Defense Field Activity to ensure that the decisions
7 made by that official regarding consolidation of contract
8 requirements of the department, agency, or activity as the
9 case may be, are made with a view to providing small busi-
10 ness concerns with appropriate opportunities to partici-
11 pate in Department of Defense procurements as prime
12 contractors and appropriate opportunities to participate in
13 such procurements as subcontractors.

14 “(b) LIMITATION ON USE OF ACQUISITION STRATE-
15 GIES INVOLVING CONSOLIDATION.—(1) An official of a
16 military department, Defense Agency, or Department of
17 Defense Field Activity may not execute an acquisition
18 strategy that includes a consolidation of contract require-
19 ments of the military department, agency, or activity with
20 a total value in excess of \$5,000,000, unless the senior
21 procurement executive concerned first—

22 “(A) conducts market research;

23 “(B) identifies any alternative contracting ap-
24 proaches that would involve a lesser degree of con-
25 solidation of contract requirements; and

1 “(C) determines that the consolidation is nec-
2 essary and justified.

3 “(2) A senior procurement executive may determine
4 that an acquisition strategy involving a consolidation of
5 contract requirements is necessary and justified for the
6 purposes of paragraph (1) if the benefits of the acquisition
7 strategy substantially exceed the benefits of each of the
8 possible alternative contracting approaches identified
9 under subparagraph (B) of that paragraph. However, sav-
10 ings in administrative or personnel costs alone do not con-
11 stitute, for such purposes, a sufficient justification for a
12 consolidation of contract requirements in a procurement
13 unless the total amount of the cost savings is expected
14 to be substantial in relation to the total cost of the pro-
15 curement.

16 “(3) Benefits considered for the purposes of para-
17 graphs (1) and (2) may include cost and, regardless of
18 whether quantifiable in dollar amounts—

19 “(A) quality;

20 “(B) acquisition cycle;

21 “(C) terms and conditions; and

22 “(D) any other benefit.

23 “(c) DEFINITIONS.—In this section:

24 “(1) The terms ‘consolidation of contract re-
25 quirements’ and ‘consolidation’, with respect to con-

1 tract requirements of a military department, De-
2 fense Agency, or Department of Defense Field Activ-
3 ity, mean a use of a solicitation to obtain offers for
4 a single contract or a multiple award contract to sat-
5 isfy two or more requirements of that department,
6 agency, or activity for goods or services that have
7 previously been provided to, or performed for, that
8 department, agency, or activity under two or more
9 separate contracts smaller in cost than the total cost
10 of the contract for which the offers are solicited.

11 “(2) The term “multiple award contract”
12 means—

13 “(A) a contract that is entered into by the
14 Administrator of General Services under the
15 multiple award schedule program referred to in
16 section 2302(2)(C) of this title;

17 “(B) a multiple award task order contract
18 or delivery order contract that is entered into
19 under the authority of sections 2304a through
20 2304d of this title or sections 303H through
21 303K of the Federal Property and Administra-
22 tive Services Act of 1949 (41 U.S.C. 253h
23 through 253k); and

24 “(C) any other indeterminate delivery, in-
25 determinate quantity contract that is entered

1 into by the head of a Federal agency with two
2 or more sources pursuant to the same sollicita-
3 tion.

4 “(3) The term ‘senior procurement executive
5 concerned’ means—

6 “(A) with respect to a military department,
7 the official designated under section 16(3) of
8 the Office of Federal Procurement Policy Act
9 (41 U.S.C. 414(3)) as the senior procurement
10 executive for the military department; or

11 “(B) with respect to a Defense Agency or
12 a Department of Defense Field Activity, the of-
13 ficial so designated for the Department of De-
14 fense.

15 “(4) The term ‘small business concern’ means
16 a business concern that is determined by the Admin-
17 istrator of the Small Business Administration to be
18 a small-business concern by application of the stand-
19 ards prescribed under section 3(a) of the Small
20 Business Act (15 U.S.C. 632(a)).”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of such chapter is amended
23 by inserting after the item relating to section 2381
24 the following new item:

“2382. Consolidation of contract requirements: policy and restrictions.”.

25 (b) DATA REVIEW.—

1 (1) REQUIREMENT FOR REVIEW.—The Sec-
2 retary of Defense shall revise the data collection sys-
3 tems of the Department of Defense to ensure that
4 such systems are capable of identifying each pro-
5 curement that involves a consolidation of contract
6 requirements within the department with a total
7 value in excess of \$5,000,000.

8 (2) PERIODIC REVIEW.—The Secretary shall
9 ensure that appropriate officials of the Department
10 of Defense periodically review the information col-
11 lected pursuant to paragraph (1) in cooperation with
12 the Small Business Administration—

13 (A) to determine the extent of the consoli-
14 dation of contract requirements in the Depart-
15 ment of Defense; and

16 (B) to assess the impact of the consolida-
17 tion of contract requirements on the availability
18 of opportunities for small business concerns to
19 participate in Department of Defense procure-
20 ments, both as prime contractors and as sub-
21 contractors.

22 (3) DEFINITIONS.—In this subsection:

23 (A) The term “bundling of contract re-
24 quirements” has the meaning given that term

1 in section 3(o)(2) of the Small Business Act
2 (15 U.S.C. 632(o)(2)).

3 (B) The term “consolidation of contract
4 requirements” has the meaning given that term
5 in section 2382(e)(1) of title 10, United States
6 Code, as added by subsection (a).

7 (C) The term “small business concern”
8 means a business concern that is determined by
9 the Administrator of the Small Business Ad-
10 ministration to be a small-business concern by
11 application of the standards prescribed under
12 section 3(a) of the Small Business Act (15
13 U.S.C. 632(a)).

14 (e) EVALUATION OF BUNDLING EFFECTS.—Section
15 15(h)(2) of the Small Business Act (15 U.S.C. 644(h)(2))
16 is amended—

17 (1) in subparagraph (C), by inserting “, and
18 whether contract bundling played a role in the fail-
19 ure,” after “agency goals”; and

20 (2) by adding at the end the following:

21 “(G) The number and dollar value of consolida-
22 tions of contract requirements with a total value in
23 excess of \$5,000,000, including the number of such
24 consolidations that were awarded to small business
25 concerns as prime contractors.”.

1 (d) REPORTING REQUIREMENT.—

2 (1) IN GENERAL.—The Administrator of the
3 Small Business Administration shall conduct a study
4 examining the best means to determine the accuracy
5 of the market research required under section
6 15(e)(2) of the Small Business Act (15 U.S.C.
7 644(e)(2)) for each bundled contract (as defined in
8 section 3(o)(1) of such Act (15 U.S.C. 632(o)(1)), to
9 determine whether the anticipated benefits were re-
10 alized, or if they were not realized, the reasons that
11 the anticipated benefits were not realized.

12 (2) PROVISION OF INFORMATION.—The head of
13 a Federal agency shall provide to the appropriate
14 procurement center representative a copy of market
15 research required of the agency under section
16 15(e)(2) of the Small Business Act for consolida-
17 tions of contract requirements with a total value in
18 excess of \$5,000,000, upon request.

19 (3) REPORT.—Not later than 270 days after
20 the date of enactment of this Act, the Administrator
21 shall submit a report to the Committee on Small
22 Business and Entrepreneurship of the Senate and
23 the Committee on Small Business of the House of
24 Representatives on the results of the study con-
25 ducted under this subsection.

1 (4) REPEAL OF REQUIREMENT FOR ANNUAL
2 REPORT.—Section 15 of the Small Business Act (15
3 U.S.C. 644) is amended by striking subsection (p).

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