

110TH CONGRESS  
1ST SESSION

# H. R. 1873

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. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Small Business

---

## 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,*

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

### 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. Making small businesses the first choice.  
 Sec. 207. Subcontracting goals.  
 Sec. 208. Subcontracting enforcement.  
 Sec. 209. National database.  
 Sec. 210. Review of subcontracting plans.

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.

1     **TITLE I—CONTRACT BUNDLING**

2     **SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT RE-**  
 3                     **QUIREMENTS AND RELATED TERMS.**

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

6             “(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-  
 7 QUIREMENTS AND RELATED TERMS.—For purposes of  
 8 this Act:

9             “(1) BUNDLED CONTRACT.—The term ‘bundled  
 10 contract’ means a contract or order that is entered  
 11 into to meet requirements that are consolidated in a  
 12 bundling of contract requirements without regard to  
 13 its designation by the procuring agency or whether

1 a study of the effects of the solicitation on civilian  
2 or military personnel has been made.

3 “(2) BUNDLING OF CONTRACT REQUIRE-  
4 MENTS.—The term ‘bundling of contract require-  
5 ments’ means the use of any bundling methodology  
6 to satisfy 2 or more requirements for new or existing  
7 goods or services, including any services for con-  
8 struction, that is likely to be unsuitable for award to  
9 a small business concern due to—

10 “(A) the diversity, size, or specialized na-  
11 ture of the elements of the performance speci-  
12 fied;

13 “(B) the aggregate dollar value of the an-  
14 ticipated award;

15 “(C) the geographical dispersion of the  
16 contract or order performance sites; or

17 “(D) any combination of the factors de-  
18 scribed in subparagraphs (A), (B), and (C).

19 “(3) BUNDLING METHODOLOGY.—The term  
20 ‘bundling methodology’ means—

21 “(A) a solicitation to obtain offers for a  
22 single contract or order, or a multiple award  
23 contract or order;

24 “(B) a solicitation of offers for the  
25 issuance of a task or a delivery order under an

1 existing single or multiple award contract or  
2 order; or

3 “(C) the creation of any new procurement  
4 requirement that permits a consolidation of  
5 contract or order requirements”.

6 **SEC. 102. JUSTIFICATION.**

7 Section 15(a) of the Small Business Act (15 U.S.C.  
8 644(a)) is amended—

9 (1) by striking “is in a quantity or estimated  
10 dollar value the magnitude of which renders small  
11 business prime contract participation unlikely” and  
12 inserting “would now be combined with other re-  
13 quirements for goods and services”;

14 (2) by striking “(2) why delivery schedules”  
15 and inserting “(2) the names, addresses and size of  
16 the incumbent contract holders; (3) a description of  
17 the industries that might be interested in bidding on  
18 the contract requirements; (4) the number of small  
19 businesses listed in the industry categories that  
20 could be excluded from future bidding if the contract  
21 is combined or packaged; (5) why delivery sched-  
22 ules”;

23 (3) by striking “(3) why the proposed acquisi-  
24 tion” and inserting “(6) why the proposed acquisi-  
25 tion”;

1 (4) by striking “(4) why construction” and in-  
2 sserting “(7) why construction”;

3 (5) by striking “(5) why the agency” and in-  
4 sserting “(8) why the agency”; and

5 (6) by inserting after “prime contracting oppor-  
6 tunities.” the following: “If no notification of the  
7 procurement and accompanying statement is re-  
8 ceived, but the Administrator determines that there  
9 is cause to believe the contract combines require-  
10 ments or discrete construction projects or includes  
11 unjustified bundling, then the Administrator can de-  
12 mand that such a statement of work goods or serv-  
13 ices be completed by the procurement activity and  
14 sent to the Procurement Center Representative and  
15 the solicitation process postponed for at least 10  
16 days to allow the Administrator to review the state-  
17 ment and make recommendations as described in  
18 this section before the 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—

22 (1) by striking “If a proposed procurement in-  
23 cludes in its statement” and inserting “If a proposed  
24 procurement would negatively affect one or more

1 small business concerns, or if a proposed procure-  
2 ment includes in its statement”; and

3 (2) by inserting before “Whenever the Adminis-  
4 trator and the contracting procurement agency fail  
5 to agree,” the following: “If a small business con-  
6 cern would be adversely affected, directly or indi-  
7 rectly, by the procurement as proposed, and that  
8 small business concern or a trade association on be-  
9 half of that small business concern so requests, the  
10 Administrator may, in the Administrator’s discre-  
11 tion, take action to further the interests of that  
12 small business concern.”.

13 **SEC. 104. THIRD-PARTY REVIEW.**

14 Section 15(a) of the Small Business Act (15 U.S.C.  
15 644(a)) is amended by striking the sentence beginning  
16 “Whenever the Administrator and the contracting pro-  
17 curement agency fail to agree,” and inserting the fol-  
18 lowing: “Whenever the Administrator and the contracting  
19 procurement agency fail to agree, the Administrator shall  
20 submit the matter to the Administrator of the Office of  
21 Federal Procurement Policy within the Office of Manage-  
22 ment and Budget, who shall render his decision regarding  
23 the matter not later than 10 days after receiving the mat-  
24 ter.”.

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

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

6 Section 15(g)(1) of the Small Business Act (15  
7 U.S.C. 644(g)(1)) is amended by striking “23 percent”  
8 and inserting “30 percent”.

9 **SEC. 202. INCLUDE OVERSEAS CONTRACTS IN SMALL BUSI-**  
10 **NESS GOAL.**

11 Section 15(g) of the Small Business Act (15 U.S.C.  
12 644(g)) is amended by adding at the end the following:

13 “(3) The procurement goals required by this sub-  
14 section apply to all procurement contracts, without regard  
15 to whether the contract is for work within or outside the  
16 United States.”.

17 **SEC. 203. ANNUAL GOAL NEGOTIATION.**

18 Section 15(g)(1) of the Small Business Act (15  
19 U.S.C. 644(g)(1)) is amended by striking “The President  
20 shall annually establish Government-wide goals for pro-  
21 curement contracts” and inserting “The President shall  
22 before the close of each fiscal year establish new Govern-  
23 ment-wide procurement goals for the following fiscal year  
24 for procurement contracts”.

1 **SEC. 204. GOAL REASONABLENESS.**

2 Section 15(g)(1) of the Small Business Act (15  
3 U.S.C. 644(g)(1)) is amended by striking “Notwith-  
4 standing the Government-wide goal, each agency shall  
5 have an annual goal” and inserting “Each agency shall  
6 have an annual goal, not lower than the Government-wide  
7 goal,”.

8 **SEC. 205. USAGE OF SMALL COMPANIES IN GOAL ACHIEVE-**  
9 **MENT.**

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

18 **SEC. 206. 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)—

22 (A) by inserting “or order” after “Each  
23 contract”; and

24 (B) by striking “\$100,000” and insert  
25 “the Simplified Acquisition Threshold”; and

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

4 **SEC. 207. SUBCONTRACTING GOALS.**

5           Section 8(d) of the Small Business Act (15 U.S.C.  
6 637(d)) is amended by adding at the end the following:

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

11 **SEC. 208. SUBCONTRACTING ENFORCEMENT.**

12           Section 8(d) of the Small Business Act (15 U.S.C.  
13 637(d)) is amended by adding at the end the following:

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

19 **SEC. 209. NATIONAL DATABASE.**

20           The Administrator of the Small Business Administra-  
21 tion shall ensure that whenever a small business enters  
22 its information in the Central Contractor Registry, or any  
23 successor to that registry, the Administrator contacts that  
24 business within 30 days regarding the likelihood of Fed-  
25 eral contracting opportunities. The Administrator shall

1 ensure that each small business that so registers is, for  
2 each industry code entered by that small business, pro-  
3 vided with the total dollar value of government contract  
4 awards to small businesses for that industry.

5 **SEC. 210. REVIEW OF SUBCONTRACTING PLANS.**

6 Not later than 120 days after the date of the enact-  
7 ment of this section, the Administrator of the Small Busi-  
8 ness Administration shall, after an opportunity for notice  
9 and comment, prescribe regulations to govern the Admin-  
10 istrator’s review of subcontracting plans, including stand-  
11 ards for determining good faith effort in compliance with  
12 the subcontracting plans.

13 **TITLE III—PROTECTION OF**  
14 **TAXPAYERS FROM FRAUD**

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

16 (a) **IN GENERAL.**—The Administrator of the Small  
17 Business Administration shall work with appropriate Fed-  
18 eral agencies to ensure that whenever a business fails to  
19 prevail in a protest over size, a notification shall be placed  
20 adjacent to that concern’s listing in the Central Con-  
21 tractor Registry (or any successor to that registry).

22 (b) **COMPTROLLER GENERAL CERTIFICATION.**—The  
23 Administrator shall, in making any report of small busi-  
24 ness goal accomplishments, qualify the accomplishments  
25 as “estimated”, until the Administrator obtains from the

1 Comptroller General the Comptroller General's certifi-  
2 cation that there are no data integrity issues with respect  
3 to the national repository of contract award information  
4 known as Federal Procurement Data System-Next Gen-  
5 eration (FPDS-NG), or any successor to that repository.

6 (c) AWARDS TO LARGE BUSINESSES.—The Inspector  
7 General of the Small Business Administration shall, on an  
8 annual basis, submit to Congress a report on the number  
9 and dollar value of contract awards that were coded as  
10 awards to small business concerns but in fact were made  
11 to businesses that did not qualify as small business con-  
12 cerns.

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

14 The Administrator of the Small Business Administra-  
15 tion shall ensure, on a biannual basis, that an independent  
16 audit is performed of the Central Contractor Registry, or  
17 any successor to that registry, and that the Dynamic  
18 Small Business Search portion of the registry, or any suc-  
19 cessor to that portion of the registry, is purged of any  
20 businesses that are not in fact small businesses. If a busi-  
21 ness that has been so purged attempts, while not in fact  
22 a small business, to re-register, that business is subject  
23 to debarment as a Federal contractor and is further sub-  
24 ject to penalties outlined in section 16 of the Small Busi-  
25 ness Act (15 U.S.C. 645).

1 **SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE**  
2 **STANDARDS AND REGISTRATION WITH CEN-**  
3 **TRAL CONTRACTOR REGISTRY.**

4 Section 3(a) of the Small Business Act (15 U.S.C.  
5 632(a)) is amended by adding at the end the following:

6 “(5) RECERTIFICATION.—

7 “(A) IN GENERAL.—If a business concern is  
8 awarded a contract because of a standard by which  
9 it is determined to be a small business concern, and  
10 the business concern is close to exceeding that  
11 standard at the time the award is made, then the  
12 business concern must, annually after the date of  
13 the award, recertify to the agency awarding the con-  
14 tract whether it meets that standard.

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

18 “(i) a number-of-employees standard if the  
19 number of employees of the business concern is  
20 95 percent or more of the maximum number of  
21 employees allowed under the standard; and

22 “(ii) a dollar-volume-of-business standard  
23 if the dollar volume of business is 80 percent or  
24 more of the maximum dollar volume allowed  
25 under the standard.

1       “(6) REGISTRY.—For a business concern to be  
2 awarded a contract because of a standard by which it is  
3 determined to be a small business concern, the business  
4 concern must, annually after the end of the fiscal year  
5 used by the business concern, update its listing in the Cen-  
6 tral Contractor Registry.”.

7       **TITLE IV—AUTHORIZATION OF**  
8                   **APPROPRIATIONS**

9       **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

10       There are authorized to be appropriated such sums  
11 as may be necessary to carry out this Act and the amend-  
12 ments made by this Act.

○