

# Union Calendar No. 71

110TH CONGRESS  
1ST SESSION

# 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.

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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

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]

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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,*

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.*

*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.*

1 **SEC. 2. REGULATIONS.**

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

4 (1) *the Administrator of the Small Business Ad-*  
5 *ministration shall promulgate regulations to imple-*  
6 *ment this Act and the amendments made by this Act;*  
7 *and*

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

11 (b) *NOTICE AND COMMENT.*—*The regulations required*  
12 *by subsection (a) shall be promulgated after opportunity for*  
13 *notice and comment as required by section 553(b) of title*  
14 *5, United States Code.*

15 **TITLE I—CONTRACT BUNDLING**

16 **SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT RE-**  
17 **QUIREMENTS AND RELATED TERMS.**

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

1       “(o) *DEFINITIONS OF BUNDLING OF CONTRACT RE-*  
2 *QUIREMENTS AND RELATED TERMS.—For purposes of this*  
3 *Act:*

4               “(1) *BUNDLED CONTRACT.—*

5                       “(A) *IN GENERAL.—The term ‘bundled con-*  
6 *tract’ means a contract or order that is entered*  
7 *into to meet procurement requirements that are*  
8 *consolidated in a bundling of contract require-*  
9 *ments, without regard to its designation by the*  
10 *procuring agency or whether a study of the ef-*  
11 *fects of the solicitation on civilian or military*  
12 *personnel has been made.*

13                       “(B) *EXCEPTIONS.—The term does not in-*  
14 *clude—*

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

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

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

23                       “(A) *IN GENERAL.—The term ‘bundling of*  
24 *contract requirements’ means the use of any bun-*  
25 *dling methodology to satisfy 2 or more procure-*

1           *ment requirements for new or existing goods or*  
2           *services, including any construction services, that*  
3           *is likely to be unsuitable for award to a small*  
4           *business concern due to—*

5                     *“(i) the diversity, size, or specialized*  
6                     *nature of the elements of the performance*  
7                     *specified;*

8                     *“(ii) the aggregate dollar value of the*  
9                     *anticipated award;*

10                    *“(iii) the geographical dispersion of the*  
11                    *contract or order performance sites; or*

12                    *“(iv) any combination of the factors*  
13                    *described in clauses (i), (ii), and (iii).*

14                    *“(B) 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 (4); or*

20                    *“(ii) the use of a bundling methodology*  
21                    *to meet procurement requirements, all of*  
22                    *which are exempted requirements under*  
23                    *paragraph (5).*

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;

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; or

7           “(C) the creation of any new procurement  
8           requirement that permits a consolidation of con-  
9           tract or order requirements.

10          “(4) *DOLLAR THRESHOLD.*—The term ‘dollar  
11          threshold’ means—

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

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

15          “(5) *EXEMPTED REQUIREMENTS.*—The term ‘ex-  
16          empted requirement’ means one or more of the fol-  
17          lowing:

18                 “(A) A procurement requirement solely for  
19                 items that are not commercial items (as the term  
20                 ‘commercial item’ is defined in section 4(12) of  
21                 the Office of Federal Procurement Policy Act (41  
22                 U.S.C. 403(12))).

23                 “(B) A procurement requirement with re-  
24                 spect to which a determination that it is unsuit-  
25                 able for award to a small business concern has

1           *previously been made by the agency. However,*  
2           *the Administrator shall have authority to review*  
3           *and reverse such a determination for purposes of*  
4           *this paragraph and, if the Administrator does*  
5           *reverse that determination, the term ‘exempted*  
6           *requirement’ shall not apply to that procurement*  
7           *requirement.*

8           “(6) *PROCUREMENT REQUIREMENT.*—*The term*  
9           *‘procurement requirement’ means a determination by*  
10          *an agency that a specified good or service is needed*  
11          *to satisfy the mission of the agency.”.*

12 **SEC. 102. JUSTIFICATION.**

13          *Section 15(a) of the Small Business Act (15 U.S.C.*  
14          *644(a)) is amended—*

15                 (1) *by striking “is in a quantity or estimated*  
16                 *dollar value the magnitude of which renders small*  
17                 *business prime contract participation unlikely” and*  
18                 *inserting “would now be combined with other require-*  
19                 *ments for goods and services”;*

20                 (2) *by striking “(2) why delivery schedules” and*  
21                 *inserting “(2) the names, addresses and size of the in-*  
22                 *cumbent contract holders; (3) a description of the in-*  
23                 *dustries that might be interested in bidding on the*  
24                 *contract requirements; (4) the number of small busi-*  
25                 *nesses listed in the industry categories that could be*

1 *excluded from future bidding if the contract is com-*  
2 *bined or packaged; (5) why delivery schedules”;*

3 *(3) by striking “(3) why the proposed acquisi-*  
4 *tion” and inserting “(6) why the proposed acquisi-*  
5 *tion”;*

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

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

10 *(6) by striking “justified.” and inserting “justi-*  
11 *fied. The statement shall also set forth the proposed*  
12 *procurement strategy required by subsection (e) and,*  
13 *if applicable, the specifications required by subsection*  
14 *(e)(3). Concurrently, the statement shall be made*  
15 *available to the public, including through dissemina-*  
16 *tion in the Federal contracting opportunities data-*  
17 *base.”; and*

18 *(7) by inserting after “prime contracting oppor-*  
19 *tunities.” the following: “If no notification of the pro-*  
20 *curement and accompanying statement is received,*  
21 *but the Administrator determines that there is cause*  
22 *to believe the contract combines requirements or a*  
23 *contract (single or multiple award) or task or deliv-*  
24 *ery order for construction services or includes unjusti-*  
25 *fied bundling, then the Administrator can demand*

1        *that such a statement of work goods or services be*  
2        *completed by the procurement activity and sent to the*  
3        *Procurement Center Representative and the sollicita-*  
4        *tion process postponed for at least 10 days to allow*  
5        *the Administrator to review the statement and make*  
6        *recommendations as described in this section before*  
7        *the procurement is continued.”.*

8        **SEC. 103. APPEALS.**

9        *Section 15(a) of the Small Business Act (15 U.S.C.*  
10       *644(a)) is amended—*

11                *(1) by striking “If a proposed procurement in-*  
12                *cludes in its statement” and inserting “If a proposed*  
13                *procurement would negatively affect one or more*  
14                *small business concerns, or if a proposed procurement*  
15                *includes in its statement”; and*

16                *(2) by inserting before “Whenever the Adminis-*  
17                *tration and the contracting procurement agency fail*  
18                *to agree,” the following: “If a small business concern*  
19                *would be adversely affected, directly or indirectly, by*  
20                *the procurement as proposed, and that small business*  
21                *concern or a trade association on behalf of that small*  
22                *business concern so requests, the Administrator may,*  
23                *in the Administrator’s discretion, take action to fur-*  
24                *ther the interests of that small business concern.”.*

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

2 *Section 15(a) of the Small Business Act (15 U.S.C.*  
3 *644(a)) is amended by striking the sentence beginning*  
4 *“Whenever the Administration and the contracting procure-*  
5 *ment agency fail to agree,” and inserting the following:*  
6 *“Whenever the Administrator and the contracting procure-*  
7 *ment agency fail to agree, the Administrator shall submit*  
8 *the matter to the Administrator of the Office of Federal Pro-*  
9 *curement Policy within the Office of Management and*  
10 *Budget, who shall render his decision regarding the matter*  
11 *not later than 10 days after receiving the matter.”.*

12 **TITLE II—INCREASING THE NUM-**  
13 **BER OF SMALL BUSINESS**  
14 **CONTRACTS AND SUB-**  
15 **CONTRACTS**

16 **SEC. 201. SMALL BUSINESS GOAL.**

17 *Section 15(g)(1) of the Small Business Act (15 U.S.C.*  
18 *644(g)(1)) is amended by striking “23 percent” and insert-*  
19 *ing “30 percent”.*

20 **SEC. 202. INCLUDE OVERSEAS CONTRACTS IN SMALL BUSI-**  
21 **NESS GOAL.**

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

24 *“(3) The procurement goals required by this subsection*  
25 *apply to all procurement contracts, without regard to*

1 *whether the contract is for work within or outside the*  
2 *United States.”.*

3 **SEC. 203. ANNUAL GOAL NEGOTIATION.**

4 *Section 15(g)(1) of the Small Business Act (15 U.S.C.*  
5 *644(g)(1)) is amended by striking “The President shall an-*  
6 *nually establish Government-wide goals for procurement*  
7 *contracts” and inserting “The President shall before the*  
8 *close of each fiscal year establish new Government-wide pro-*  
9 *curement goals for the following fiscal year for procurement*  
10 *contracts”.*

11 **SEC. 204. GOAL REASONABLENESS.**

12 *Section 15(g)(1) of the Small Business Act (15 U.S.C.*  
13 *644(g)(1)) is amended by striking “Notwithstanding the*  
14 *Government-wide goal, each agency shall have an annual*  
15 *goal” and inserting “Each agency shall have an annual*  
16 *goal, not lower than the Government-wide goal,”.*

17 **SEC. 205. USAGE OF SMALL COMPANIES IN GOAL ACHIEVE-**  
18 **MENT.**

19 *Section 15(g) of the Small Business Act (15 U.S.C.*  
20 *644(g)) is amended by adding at the end the following:*

21 *“(4) For purposes of this subsection and subsection (h),*  
22 *a small business concern shall be counted toward one addi-*  
23 *tional category goal only, even if that small business con-*  
24 *cern otherwise qualifies under more than one category goal.*

1 *In this paragraph, the term ‘category goal’ means a goal*  
2 *described in paragraph (2).’.*

3 **SEC. 206. ANNUAL PLAN FOR EACH AGENCY EXPLAINING**  
4 **HOW AGENCY WILL MEET SMALL BUSINESS**  
5 **GOALS.**

6 *Section 15(g) of the Small Business Act (15 U.S.C.*  
7 *644(g)) is amended by adding at the end the following:*

8 *“(5) Before the beginning of each fiscal year, the head*  
9 *of each Federal agency shall submit to the Administrator*  
10 *of the Small Business Administration and to Congress a*  
11 *detailed plan explaining how the agency intends to meet*  
12 *the small business goals under this subsection that apply*  
13 *to that agency for that fiscal year.’.*

14 **SEC. 207. MAKING SMALL BUSINESSES THE FIRST CHOICE.**

15 *Section 15(j) of the Small Business Act (15 U.S.C.*  
16 *644(j)) is amended—*

17 *(1) in paragraph (1)—*

18 *(A) by inserting “or order” after “Each*  
19 *contract”; and*

20 *(B) by striking “\$100,000” and insert “the*  
21 *Simplified Acquisition Threshold”; and*

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

1 **SEC. 208. 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. 209. 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. 210. 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. 211. 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. 212. 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 30 percent, the head*  
20 *of the agency shall, in the report, explain why the percent-*  
21 *age is less than 30 percent and what will be done to ensure*  
22 *that the percentage for the following fiscal year will not be*  
23 *less than 30 percent.”.*

1           **TITLE III—PROTECTION OF**  
2           **TAXPAYERS FROM FRAUD**

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

4           (a) *IN GENERAL.*—*The Administrator of the Small*  
5 *Business Administration shall work with appropriate Fed-*  
6 *eral agencies to ensure that whenever a business concern*  
7 *is awarded a contract on the basis that it qualifies as small*  
8 *and then is determined not to qualify as small, a notifica-*  
9 *tion of those facts (that an award was made on such a basis,*  
10 *and that such a determination was made) shall be placed*  
11 *adjacent to that concern’s listing in the Central Contractor*  
12 *Registry (or any successor to that registry).*

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

22           (c) *AWARDS TO LARGE BUSINESSES.*—*For each Fed-*  
23 *eral agency, the Inspector General of that agency shall, on*  
24 *an annual basis, submit to Congress a report on the number*  
25 *and dollar value of contract awards that were coded as*

1 awards to small business concerns but in fact were made  
2 to businesses that did not qualify as small business con-  
3 cerns.

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

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

17 **SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE**  
18 **STANDARDS AND REGISTRATION WITH CEN-**  
19 **TRAL CONTRACTOR REGISTRY.**

20 *Section 3(a) of the Small Business Act (15 U.S.C.*  
21 *632(a)) is amended by adding at the end the following:*

22 *“(5) RECERTIFICATION.—*

23 *“(A) IN GENERAL.—If a business concern is*  
24 *awarded a contract because of a standard by which*  
25 *it is determined to be a small business concern, and*

1        *the business concern is close to exceeding that stand-*  
2        *ard at the time the award is made, then the business*  
3        *concern must, annually after the date of the award,*  
4        *recertify to the agency awarding the contract whether*  
5        *it meets that standard.*

6            “(B) ‘CLOSE TO EXCEEDING’.—For purposes of  
7        *subparagraph (A), a business concern is close to ex-*  
8        *ceeding—*

9            “(i) *a number-of-employees standard if the*  
10        *number of employees of the business concern is*  
11        *95 percent or more of the maximum number of*  
12        *employees allowed under the standard; and*

13            “(ii) *a dollar-volume-of-business standard if*  
14        *the dollar volume of business is 80 percent or*  
15        *more of the maximum dollar volume allowed*  
16        *under the standard.*

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

1     **TITLE IV—AUTHORIZATION OF**  
 2                     **APPROPRIATIONS**

3     **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

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

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

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

11            **(b) TABLE OF CONTENTS.—The table of con-**  
 12    **tents 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.

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Sec. 104. Review.

**TITLE II—INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS**

Sec. 201. Small business goal.

Sec. 202. Annual goal negotiation.

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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.**

1 **SEC. 2. REGULATIONS.**

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

4 **(1) the Administrator of the Small**  
5 **Business Administration shall promul-**  
6 **gate regulations to implement this Act**  
7 **and the amendments made by this Act;**  
8 **and**

9 **(2) the Federal Acquisition Regula-**  
10 **tion shall be revised to implement this**  
11 **Act and the amendments made by this**  
12 **Act.**

13 **(b) NOTICE AND COMMENT.—The regula-**  
14 **tions required by subsection (a) shall be pro-**  
15 **mulgated after opportunity for notice and**  
16 **comment as required by section 553(b) of title**  
17 **5, United States Code.**

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**  
5 **U.S.C. 632) is amended by amending sub-**  
6 **section (o) to read as follows:**

7 **“(o) DEFINITIONS OF BUNDLING OF CON-**  
8 **TRACT REQUIREMENTS AND RELATED TERMS.—**

9 **For purposes of this Act:**

10 **“(1) BUNDLED CONTRACT.—**

11 **“(A) IN GENERAL.—The term ‘bun-**  
12 **dled contract’ means a contract or**  
13 **order that is entered into to meet**  
14 **procurement requirements that are**  
15 **consolidated in a bundling of con-**  
16 **tract requirements, without regard to**  
17 **its designation by the procuring**  
18 **agency or whether a study of the ef-**  
19 **fects of the solicitation on civilian or**  
20 **military personnel has been made.**

21 **“(B) EXCEPTIONS.—The term does**  
22 **not include—**

23 **“(i) a contract or order with**  
24 **an aggregate dollar value below**

1           the dollar threshold specified in  
2           paragraph (4); or

3           “(ii) a contract or order that  
4           is entered into to meet procure-  
5           ment requirements, all of which  
6           are exempted requirements under  
7           paragraph (5).

8           “(2) BUNDLING OF CONTRACT REQUIRE-  
9           MENTS.—

10           “(A) IN GENERAL.—The term ‘bun-  
11           dling of contract requirements’  
12           means the use of any bundling meth-  
13           odology to satisfy 2 or more procure-  
14           ment requirements for goods or serv-  
15           ices, including any construction serv-  
16           ices, previously supplied or per-  
17           formed under separate smaller con-  
18           tracts or orders that is likely to be  
19           unsuitable for award to a small busi-  
20           ness concern due to—

21           “(i) the diversity, size, or spe-  
22           cialized nature of the elements of  
23           the performance specified;

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

1           “(iii) the geographical disper-  
2           sion of the contract or order per-  
3           formance sites; or

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

7           “(B) INCLUSION OF NEW FEATURES  
8           OR FUNCTIONS.—A combination of con-  
9           tract requirements that would meet  
10          the definition of a bundling of con-  
11          tract requirements but for the addi-  
12          tion of a procurement requirement  
13          with at least one new good or service  
14          shall be considered to be a bundling  
15          of contract requirements unless the  
16          new features or functions substan-  
17          tially transform the goods or services  
18          previously performed.

19          “(C) EXCEPTIONS.—The term does  
20          not include—

21                 “(i) the use of a bundling  
22                 methodology for an anticipated  
23                 award with an aggregate dollar  
24                 value below the dollar threshold  
25                 specified in paragraph (5); or

1           “(ii) the use of a bundling  
2           methodology to meet procure-  
3           ment requirements, all of which  
4           are exempted requirements under  
5           paragraph (6).

6           “(3) BUNDLING METHODOLOGY.—The  
7           term ‘bundling methodology’ means—

8                   “(A) a solicitation to obtain offers  
9                   for a single contract or order, or a  
10                  multiple award contract or order; or

11                  “(B) a solicitation of offers for the  
12                  issuance of a task or a delivery order  
13                  under an existing single or multiple  
14                  award contract or order.

15           “(4) SEPARATE SMALLER CONTRACT.—  
16           The term ‘separate smaller contract’, with  
17           respect to bundling of contract require-  
18           ments, means a contract or order that  
19           has been performed by 1 or more small  
20           business concerns or was suitable for  
21           award to 1 or more small business con-  
22           cerns.

23           “(5) DOLLAR THRESHOLD.—The term  
24           ‘dollar threshold’ means—

1           “(A) \$65,000,000, if solely for con-  
2           struction services; and

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

4           “(6) EXEMPTED REQUIREMENTS.—The  
5           term ‘exempted requirement’ means a  
6           procurement requirement solely for items  
7           that are not commercial items (as the  
8           term ‘commercial item’ is defined in sec-  
9           tion 4(12) of the Office of Federal Pro-  
10          curement Policy Act (41 U.S.C. 403(12)).

11          “(7) PROCUREMENT REQUIREMENT.—The  
12          term ‘procurement requirement’ means a  
13          determination by an agency that a speci-  
14          fied good or service is needed to satisfy  
15          the mission of the agency.”.

16 SEC. 102. JUSTIFICATION.

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

19                 (1) by striking “(2) why delivery  
20                 schedules” and inserting “(2) the names,  
21                 addresses and size of the incumbent con-  
22                 tract holders; (3) a description of the in-  
23                 dustries that might be interested in bid-  
24                 ding on the contract requirements; (4)  
25                 the number of small businesses listed in

1 the industry categories that could be ex-  
2 cluded from future bidding if the con-  
3 tract is combined or packaged; (5) why  
4 delivery schedules”;

5 (2) by striking “(3) why the proposed  
6 acquisition” and inserting “(6) why the  
7 proposed acquisition”;

8 (3) by striking “(4) why construction”  
9 and inserting “(7) why construction”;

10 (4) by striking “(5) why the agency”  
11 and inserting “(8) why the agency”;

12 (5) by striking “justified.” and insert-  
13 ing “justified. The statement shall also set  
14 forth the proposed procurement strategy  
15 required by subsection (e) and, if applica-  
16 ble, the specifications required by sub-  
17 section (e)(3). The statement shall be  
18 made available to the public, including  
19 through dissemination in the Federal  
20 contracting opportunities database, con-  
21 currently with the issuance of the solici-  
22 tation.”; and

23 (6) by inserting after “prime con-  
24 tracting opportunities.” the following: “If  
25 no notification of the procurement and

1 accompanying statement is received, but  
2 the Administrator determines that there  
3 is cause to believe the contract combines  
4 requirements or a contract (single or  
5 multiple award) or task or delivery order  
6 for construction services or includes un-  
7 justified bundling, then the Adminis-  
8 trator may request that such a statement  
9 of work goods or services be completed  
10 by the procurement activity and sent to  
11 the Procurement Center Representative  
12 and the solicitation process postponed  
13 for 10 days to allow the Administrator to  
14 review the statement and make rec-  
15 ommendations as described in this sec-  
16 tion before the procurement is contin-  
17 ued.”.

18 SEC. 103. APPEALS.

19 Section 15(a) of the Small Business Act (15  
20 U.S.C. 644(a)) is amended by inserting before  
21 “Whenever the Administration and the con-  
22 tracting procurement agency fail to agree,”  
23 the following: “If a small business concern  
24 would be adversely affected, directly or indi-  
25 rectly, by the procurement as proposed, and

1 **that small business concern or a trade asso-**  
2 **ciation on behalf of that small business con-**  
3 **cern so requests, the Administrator may, in**  
4 **the Administrator’s discretion, take action to**  
5 **further the interests of that small business**  
6 **concern.”.**

7 **SEC. 104. REVIEW.**

8 **Section 15(a) of the Small Business Act (15**  
9 **U.S.C. 644(a)) is amended by striking the sen-**  
10 **tence beginning “Whenever the Administra-**  
11 **tion and the contracting procurement agency**  
12 **fail to agree,” and inserting the following:**  
13 **“Whenever the Administration and the con-**  
14 **tracting procurement agency fail to agree, the**  
15 **Administrator shall submit the matter to the**  
16 **head of the agency for a determination. The**  
17 **head of the agency shall provide a written re-**  
18 **sponse to the Administrator. A copy of such**  
19 **response shall also be provided to the Com-**  
20 **mittees on Small Business of the House of**  
21 **Representatives and Senate, the Committee**  
22 **on Oversight and Government Reform of the**  
23 **House of Representatives, and the Committee**  
24 **on Homeland Security and Governmental Af-**  
25 **fairs of the Senate.”.**

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

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

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

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

15 **SEC. 202. ANNUAL GOAL NEGOTIATION.**

16 **Section 15(g)(1) of the Small Business Act**  
17 **(15 U.S.C. 644(g)(1)) is amended by striking**  
18 **“The President shall annually establish Gov-**  
19 **ernment-wide goals for procurement con-**  
20 **tracts” and inserting “The President shall be-**  
21 **fore the close of each fiscal year establish new**  
22 **Government-wide procurement goals for the**  
23 **following fiscal year for procurement con-**  
24 **tracts”.**

1 SEC. 203. USAGE OF SMALL COMPANIES IN GOAL ACHIEVE-  
2 MENT.

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

6 “(4) For purposes of this subsection and  
7 subsection (h), a small business concern shall  
8 be counted toward one additional category  
9 goal only, even if that small business concern  
10 otherwise qualifies under more than one cat-  
11 egory goal. In this paragraph, the term ‘cat-  
12 egory goal’ means a goal described in para-  
13 graph (2).”.

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

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

20 “(5) Before the beginning of each fiscal  
21 year, the head of each Federal agency shall  
22 submit to the Administrator of the Small Busi-  
23 ness Administration and to Congress a de-  
24 tailed plan explaining how the agency intends  
25 to meet the small business goals under this

1 subsection that apply to that agency for that  
2 fiscal year.”.

3 SEC. 205. MAKING SMALL BUSINESSES THE FIRST CHOICE.

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

6 (1) in paragraph (1), by striking  
7 “\$100,000” and inserting “the Simplified  
8 Acquisition Threshold”; and

9 (2) in paragraph (3), by striking “sub-  
10 section (a) of section 8” and inserting  
11 “section 8, 31, or 36”.

12 SEC. 206. UNIFORM METRIC FOR SUBCONTRACTING  
13 ACHIEVEMENTS.

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

17 “(12) In carrying out this subsection, the  
18 Administrator shall require each prime con-  
19 tractor to report small business subcontract  
20 usage at all tiers based on the percentage of  
21 the total dollar amount of the contract  
22 award.”.

1 SEC. 207. SUBCONTRACTING DATABASE.

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

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

11 SEC. 208. NATIONAL DATABASE.

12       **The Administrator of the Small Business**  
13 **Administration shall ensure that whenever a**  
14 **small business enters its information in the**  
15 **Central Contractor Registry, or any successor**  
16 **to that registry, the Administrator contacts**  
17 **that business within 30 days regarding the**  
18 **likelihood of Federal contracting opportuni-**  
19 **ties. The Administrator shall ensure that each**  
20 **small business that so registers is, for each in-**  
21 **dustry code entered by that small business,**  
22 **provided with the total dollar value of govern-**  
23 **ment contract awards to small businesses for**  
24 **that industry.**

1 SEC. 209. REVIEW OF SUBCONTRACTING PLANS.

2 **Not later than 120 days after the date of**  
3 **the enactment of this section, the Adminis-**  
4 **trator of the Small Business Administration**  
5 **shall, after an opportunity for notice and com-**  
6 **ment, prescribe regulations to govern the Ad-**  
7 **ministrator’s review of subcontracting plans,**  
8 **including standards for determining good**  
9 **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**  
14 **U.S.C. 644(h)) is amended by adding at the**  
15 **end the following:**

16 **“(4) At the conclusion of each fiscal year,**  
17 **the head of each Federal agency shall submit**  
18 **to Congress a report specifying the percent-**  
19 **age of contracts awarded by that agency for**  
20 **that fiscal year that were awarded to small**  
21 **business concerns. If the percentage is less**  
22 **than 25 percent, the head of the agency shall,**  
23 **in the report, explain why the percentage is**  
24 **less than 25 percent and what will be done to**  
25 **ensure that the percentage for the following**  
26 **fiscal year will not be 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  
4 enacted by December 31, 2007, revising the  
5 limits referred to in this subsection, the Ad-  
6 ministrator for Federal Procurement Policy,  
7 in consultation with the Administrator for  
8 Small Business, shall establish appropriate  
9 limits on the value of contracts awarded with-  
10 out the use of competitive procedures to par-  
11 ticipants in the program established by sec-  
12 tion 8(a) of the Small Business Act (15 USC  
13 637(a)) that are not subject to the limits on the  
14 value of such contracts established by para-  
15 graph (1)(D) of section 8(a) of such Act.

16 (b) **CONSULTATION.**—In establishing any  
17 limit described in subsection (a). the Adminis-  
18 trator for Federal Procurement Policy shall  
19 consult with representatives of the affected  
20 program participants. The Administrator  
21 shall also take into account—

22 (1) any special circumstances and  
23 needs of the affected program partici-  
24 pants; and

25 (2) the advantages of promoting com-  
26 petition in Federal contracting.

1           **TITLE III—PROTECTION OF**  
2           **TAXPAYERS FROM FRAUD**

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

4           **(a) IN GENERAL.—The Administrator of the**  
5   **Small Business Administration shall work**  
6   **with appropriate Federal agencies to ensure**  
7   **that whenever a business concern is awarded**  
8   **a contract on the basis that it qualifies as**  
9   **small and then is determined not to qualify as**  
10   **small, a notification of those facts (that an**  
11   **award was made on such a basis, and that**  
12   **such a determination was made) shall be**  
13   **placed adjacent to that concern’s listing in the**  
14   **Central Contractor Registry (or any successor**  
15   **to that registry).**

16           **(b) COMPTROLLER GENERAL CERTIFI-**  
17   **CATION.—The Administrator shall, in making**  
18   **any report of small business goal accomplish-**  
19   **ments, qualify the accomplishments as “esti-**  
20   **mated”, until the Administrator obtains from**  
21   **the Comptroller General the Comptroller**  
22   **General’s certification that there are no data**  
23   **integrity issues with respect to the national**  
24   **repository of contract award information**  
25   **known as Federal Procurement Data System-**

1 Next Generation (FPDS-NG), or any successor  
2 to that repository.

3 (c) AWARDS TO LARGE BUSINESSES.—For  
4 each Federal agency, the Inspector General of  
5 that agency shall, on an annual basis, submit  
6 to Congress a report on the number and dol-  
7 lar value of contract awards that were coded  
8 as awards to small business concerns but in  
9 fact were made to businesses that did not  
10 qualify as small business concerns.

11 SEC. 302. REVIEW OF NATIONAL REGISTRY.

12 The Administrator of the Small Business  
13 Administration shall ensure, on a biannual  
14 basis, that an independent audit is performed  
15 of the Central Contractor Registry, or any  
16 successor to that registry, and that the Dy-  
17 namic Small Business Search portion of the  
18 registry, or any successor to that portion of  
19 the registry, is purged of any businesses that  
20 are not in fact small businesses. If a business  
21 that has been so purged attempts, while not  
22 in fact a small business, to re-register, that  
23 business is subject to debarment as a Federal  
24 contractor and is further subject to penalties

1 outlined in section 16 of the Small Business  
2 Act (15 U.S.C. 645).

3 SEC. 303. RECERTIFICATION OF COMPLIANCE WITH SIZE  
4 STANDARDS AND REGISTRATION WITH CEN-  
5 TRAL CONTRACTOR REGISTRY.

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

9 “(5) RECERTIFICATION.—

10 “(A) IN GENERAL.—If a business con-  
11 cern is awarded a contract because of a  
12 standard by which it is determined to be  
13 a small business concern, and the busi-  
14 ness concern is close to exceeding that  
15 standard at the time the award is made,  
16 then the business concern must, annually  
17 after the date of the award, recertify to  
18 the agency awarding the contract wheth-  
19 er it meets that standard.

20 “(B) ‘CLOSE TO EXCEEDING’.—For pur-  
21 poses of subparagraph (A), a business  
22 concern is close to exceeding—

23 “(i) a number-of-employees stand-  
24 ard if the number of employees of the  
25 business concern is 95 percent or

1           **more of the maximum number of em-**  
2           **ployees allowed under the standard;**  
3           **and**

4           **“(ii) a dollar-volume-of-business**  
5           **standard if the dollar volume of busi-**  
6           **ness is 80 percent or more of the max-**  
7           **imum dollar volume allowed under**  
8           **the standard.**

9           **“(6) REGISTRY.—For a business concern to**  
10          **be awarded a contract because of a standard**  
11          **by which it is determined to be a small busi-**  
12          **ness concern, the business concern must, an-**  
13          **nually after the end of the fiscal year used by**  
14          **the business concern, update its listing in the**  
15          **Central Contractor Registry.”.**

16          **TITLE IV—AUTHORIZATION OF**  
17          **APPROPRIATIONS**

18          **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

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

Union Calendar No. 71

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

**H. R. 1873**

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

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**A BILL**

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

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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