106TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPORT
106–858

SMALL BUSINESS COMPETITION PRESERVATION ACT OF 2000

SEPTEMBER 18, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TALENT, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 4945]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 4945) to amend the Small Business Act to strengthen existing protections for small business participation in the Federal procurement contracting process, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 4945, the "Small Business Competition Preservation Act of 2000," is to ensure that the United States Small Business Administration (SBA) and Congress have sufficient information concerning the impact of contract consolidation on small business participation in the federal procurement process. Access to adequate data is necessary so that federal agencies can determine whether they should adjust their procurement strategies in order to meet the small business participation goals set forth in section 15 of the Small Business Act,

The bill mandates that the Administrator of the SBA develop a database of bundled contracts. The Administrator is then required to assess whether contracts whose terms have expired but will be recompeted as part of bundled contracts have achieved the savings or improvements in quality that the procuring agency anticipated when it consolidated the contract requirements initially. This analysis also will be used by the Administrator in determining the number of small businesses that have been displaced as prime contractors as a result of contract bundling. All of this information will

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be reported on an annual basis to the House and Senate Small Business Committees.

NEED FOR LEGISLATION

Contract bundling is one of the most important issues facing small business today. The federal government spends nearly 200 billion dollars a year procuring goods and services. Although Congress has made it a goal for federal agencies to spend at least 20 percent of their procurement dollars with small businesses, the federal government has not met that objective. Federal government procurement policies apparently place a greater premium on efficiency and the reduction of workload for contracting officers than the goals of a diverse, competitive industrial base. The ultimate losers will be the American taxpayer who will face the long-term prospect of procuring lower quality goods and services at higher prices.

Bundling of contracts is performed by all federal agencies but one agency, the Department of Defense, stands out as the agency with the most adverse impact on small business participation as prime contractors. To the extent that the Department actually achieves substantial cost savings or significant improvements in the quality of goods and services procured, bundling is at least defensible. However, the Committee has examined a number of contracts and has not found supportable justifications for these contracts.

For example, the Department of Defense issued a contract for the provision of telecommunication services to the three largest long-distance carriers in the United States who would provide, on a competitively-bid task order arrangement, interstate interexchange (long-distance) circuits for the transmission of voice and data between various Department installations. Ostensibly, the limitation on the number of firms eligible to bid was necessitated by security concerns. However, an examination of the task order requests reveals that the need for security was not an issue in many of the task orders. Thus, the Department, at substantial expense to the taxpayers (competition under the prior system was significantly greater resulting in substantially lower prices for telecommunication services), bundled a contract without any clear need to do so.

The Committee also examined the consolidation of Marine Corps mess hall services. The Department of Navy currently provides mess hall services on a base-by-base contract. Many current providers are small businesses. Despite evidence that demonstrates improvements in quality of both the food and the service, the Department of Navy decided to consolidate these mess hall contracts into two large regions utilizing central kitchen preparation techniques known as "cook and chill." The Department of Navy has not been able to justify that the contract will save money or provide higher quality meals to Marine Corps personnel.

Numerous other examples of bundling exist both at the Department of Defense and with other government agencies. At a Committee hearing on the Department of Defense's bundling policies, the Principal Deputy Under Secretary for Acquisition, Mr. David Oliver, promised that he would commission a study of the effects of bundling on small business. Some months later, Mr. Oliver ad-

mitted that the Department lacked the data needed to conduct an appropriate study of bundling.

The absence of data on bundling also affects the Administrator's ability to implement the Small Business Reauthorization Act of 1997. That legislation required federal agencies not to bundle contracts unless the procuring agency could demonstrate that the bundle would result in measurably substantial benefits, such as cost savings, quality improvements, reduction in acquisition cycle times, or better terms and conditions. The procuring agency then must identify those benefits to be derived from contract bundling and that the anticipated benefits of the proposed bundled contract justify the use of bundling. Should the Administrator of the SBA disagree with the conclusions of the procuring agency, the Administrator is entitled to file an appeal contesting the procuring agency's bundle to the head of the agency. The Administrator has never won such an appeal. The bill would require the Administrator to perform its own assessment of these measurably substantial benefits on any bundled contract which will be recompeted as a bundled contract. In addition, the Administrator will be required to determine the number of small businesses that will be displaced as prime contractors as a result of contract bundling.

The need for this legislation is great. Federal agencies contend that contract bundling saves taxpayers money while improving the quality of goods and services provided to the government. None of this has been substantiated. The database, analyses and reports to Congress in this bill will ensure that adequate data exists concerning the benefits and costs of contract bundling. This will enable federal agencies to reconfigure their procurement strategies to meet statutory goals for small business participation. Furthermore, Congress will have information needed to modify federal procurement legislation if agencies are bundling without obtaining concomitant benefits.

COMMITTEE ACTION

The Committee on Small Business held no separate hearings on H.R. 4945. During the 106th Congress, the committee held the following hearings on contract bundling: (1) the Department of Defense's Contract Bundling Policy (Nov. 4, 1999); and (2) Contract Bundling and Federal Procurement Problems Facing Small Businesses (Aug. 4, 1999). Both hearings provided substantial anecdotal evidence concerning the adverse impact of contract bundling on the ability of small businesses to maintain their status as prime contractors. The hearings also revealed the absence of adequate data within the government on contract bundling.

CONSIDERATION OF H.R. 4945

At 11:30 a.m. on July 27, 2000, the Committee on Business met to consider and report H.R. 4945. Following brief opening statements by the Chairman and Ranking Democratic Member, the Chairman declared the bill open for amendment.

No amendments were offered. Chairman Talent then moved the bill be reported, and at 11:50 a.m., by unanimous voice vote, a quorum being present, the Committee passed H.R. 4945 and ordered it reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designate the bill as the "Small Business Competition Preservation Act of 2000."

Section 2. Database, analysis, and annual report with respect to bundled contracts

This section amends section 15 of the Small Business Act by adding a new subsection (p) to establish the requirements for maintenance of a contract bundling database, analysis of bundled contracts, and reporting requirements to the House and Senate Small Business Committees.

Paragraph (1) defines the term bundled contract. In the Small Business Reauthorization Act of 1997, the term "bundled contract" was defined as a contract that consolidated existing contract requirements. It is unclear whether this definition includes new contract requirements that permit bundling although the Committee believes that the definition should be that inclusive. Furthermore, the regulations promulgated by the Administrator of the United States Small Business Administration implementing the Small Business Reauthorization Act of 1997 inappropriately exclude contracts for which a procuring agency performed an analysis mandated by Circular A–76 issued by the Office of Management and Budget ("OMB"). Paragraph (1) would clarify the definition of "bundled contract" for purposes of the maintenance of the database and analysis performed under this new subsection of section 15 of the Small Business Act.

Paragraph (1) amends the definition of contract bundle as set forth in section 3(o) of the Small Business Act by including contracts for which an agency performed a study of the effects of the contract on civilian or military personnel. The definition broadens the scope of the database maintained by the Administrator to include contracts for which an agency has performed an analysis pursuant to OMB Circular A–76. The modification does not have any legal effect on the definition of bundled contract in section 3(o) of the Small Business Act.

Paragraph (1) also modifies the definition of contract bundling, for purposes of this subsection, by including any new contract requirements that permit the consolidation of 2 or more procurement requirements. This ensures that the Administrator's database will include all bundled contracts irrespective of whether the bundled contract constitutes a new requirement.

Paragraph (2) mandates that the Administrator establish a database no later than 180 days after the effective date of the statute. The database will contain information on each bundled contract awarded by a federal agency as defined in paragraph (1) and the number of small businesses that used to provide services as prime contractors but are no longer doing so as a result of the bundled contract. The Committee expects that the Administrator will receive data from its Procurement Center Representatives as well as the Directors of the Office of Small and Disadvantaged Business Utilization. Furthermore, the Committee expects that the Administrator will construct this database with already existing funds and does not believe that a separate authorization or appropriation is

needed to maintain this database because maintenance of the database constitutes a vital adjunct to the Administrator's responsibilities under subsection (a) of section 15.

Paragraph (3) requires that the Administrator analyze bundled contracts that are recompeted as bundles when their initial terms expire. The Committee expects that the Administrator will use the database of bundled contracts established in paragraph (2) to determine which contracts need to be analyzed pursuant to this paragraph. However, if a recompeted bundle somehow is not included in the database established pursuant to paragraph (2), the Committee expects that the Administrator will undertake the analysis mandated by this paragraph.

For each contract recompeted as a bundled contract, the Administrator will be required to calculate the amount of savings and benefits from the bundled contract. The Administrator also will be required to estimate whether the savings and benefits will continue and whether such savings and benefits would be greater if the contract was divided into separate solicitations more suitable for award to small businesses. The Committee expects that the Administrator will utilize this analysis in pursuing any appeal of a bundled contract as set forth in subsection (a) of section 15.

Paragraph (4) requires the Administrator to file an annual report on contract bundling with the House and Senate Small Business Committees. The report is required to contain data on the number of small businesses displaced as prime contractors as a result of contract bundling sorted by industrial classification. The Committee expects that the report will utilize the new North American Industrial Classification rather than the old Standard Industrial Classification.

The report also shall contain a description of the bundling activity for each federal agency during the preceding fiscal year including the number of contracts bundled, the total dollar value of the bundled contracts, the justification for each bundled contract, the cost savings realized by the contract, the Administrator's estimate of the whether the savings will continue for any recompeted bundled contract, the extent to which the bundled contract complied with agency's subcontracting plan, the total dollar value awarded to small business subcontractors, the total dollar value previously awarded to small business prime contractors prior to the bundling of the contract, the impact that bundling has on the ability of small business to compete as prime contractors, and the effect that has on the industry, including the decretion of small businesses in the particular industrial classification. The Committee expects that the reports will use the new industrial classification system. Further, the Committee intends that the Administrator translate existing Standard Industrial Classifications to the new system when submitting its reports with the House and Senate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 2000.

Hon. JAMES M. TALENT,
Chairman, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4945, the Small Business Competition Preservation Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4945—Small Business Competition Preservation Act of 2000

H.R. 4945 would amend the Small Business Act to require the Small Business Administration (SBA) to study and report each year on the effect on small businesses of federal agencies combining, or bundling, together multiple contracts into a single procurement contract. Specifically, SBA would report on the number and type of small businesses that were displaced as prime contractors as a result of implementing such larger, combined contracts and the number and total dollar amount of such contracts. In addition, for each bundled contract, the report would include the agency's justification for combining the contracts, whether the combined contract was consistent with the agency's small business subcontracting plan, any estimated savings for combining contracts, and the extent to which SBA expects such savings would continue.

The annual cost of implementing H.R. 4945 is uncertain because no data exist about the number of contracts that agencies bundle together each year. Agencies, however, are already required to produce much of the information that SBA would collect under H.R. 4945 for all of their contracts. In addition, agencies are beginning to submit some of that data to the Federal Procurement Data System, a database of procurement actions that is maintained by the General Services Administration. CBO estimates that implementing H.R. 4945 would cost SBA less than $500,000 a year, subject to the availability of appropriated funds, to develop and maintain such a database, as well as report annually to the Congress.

In addition to SBA's costs, implementing the bill would increase costs for federal agencies to estimate the accumulated costs of savings each year for each bundled contract. Because we expect agencies would base such estimates on the market research they already perform under current law, CBO estimates that the annual increase in costs for other agencies would also be less than $500,000 subject to the availability of appropriated funds. In total, CBO estimates that implementing H.R. 4945 would cost around $500,000 a year.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 4945 contains no intergovernmental or private-sector mandates as defined in the Un-

funded Mandates Reform Act and would not affect state, local, or tribal governments.

The CBO staff contact is John R. Righter. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMMITTEE ESTIMATE OF COSTS

Pursuant to the Congressional Budget Act of 1974, the Committee estimates that the amendments to the Small Business Act contained in H.R. 4945 will not significantly increase discretionary spending over the next five fiscal years. The Committee also estimates that H.R. 4945 will not affect direct spending. These estimates concur with Congressional Budget Office (CBO) estimates.

Furthermore, pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H.R. 4945 will not significantly increase other administrative costs.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 4945.

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 4945 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

COMPLIANCE WITH P.L. 104–4

H.R. 4945 contains no unfunded mandates.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4945 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of P.L. 104–1.

FEDERAL ADVISORY COMMITTEE STATEMENT

This legislation does not establish or authorize the establishment of any new advisory committees.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 15 OF THE SMALL BUSINESS ACT

SEC. 15. (a) * * *

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(p) DATABASE, ANALYSIS, AND ANNUAL REPORT WITH RESPECT TO BUNDLED CONTRACTS.—

(1) BUNDLED CONTRACT DEFINED.—In this subsection, the term "bundled contract" includes—

(A) each contract that meets the definition set forth in section 3(o) regardless of whether the contracting agency has conducted a study of the effects of the solicitation for the contract on civilian or military personnel of the United States; and

(B) each new procurement requirement that permits the consolidation of 2 or more procurement requirements.

(2) DATABASE.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) ANALYSIS.—For each bundled contract that is to be recompeted as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) ANNUAL REPORT ON CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

(B) CONTENTS.—Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

(cc) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

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