

CONTRACTOR OPPORTUNITY PROTECTION ACT OF 2012

DECEMBER 21, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 4081]

The Committee on Small Business, to whom was referred the bill (H.R. 4081) to amend the Small Business Act to consolidate and revise provisions relating to contract bundling, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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I. AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Contractor Opportunity Protection Act of 2012”.

SEC. 2. CONSOLIDATION OF PROVISIONS RELATING TO CONTRACT BUNDLING.

Section 44 of the Small Business Act (15 U.S.C. 657q) is amended to read as follows:

“SEC. 44. CONTRACT BUNDLING.

“(a) **DEFINITIONS.**—In this Act:

“(1) **BUNDLED CONTRACT.**—The term ‘bundled contract’—

“(A) means a contract that is entered into to meet procurement requirements that are combined in a bundling of contract requirements, without regard to whether a study of the effects of the solicitation on Federal officers or employees has been made; and

“(B) does not include—

“(i) a contract with an aggregate dollar value below the dollar threshold; or

“(ii) a single award contract for the acquisition of a weapons system acquired through a major defense acquisition.

“(2) **BUNDLING METHODOLOGY.**—The term ‘bundling methodology’ means—

“(A) a solicitation to obtain offers for a single contract or a multiple award contract;

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

“(C) the creation of any new procurement requirements that permits a combination of contract requirements, including any combination of contract requirements or order requirements.

“(3) **BUNDLING OF CONTRACT REQUIREMENTS.**—The term ‘bundling of contract requirements’, with respect to the contract requirements of a Federal agency—

“(A) means the use of any bundling methodology to satisfy 2 or more procurement requirements for new or existing goods or services provided to or performed for the Federal agency, including any construction services, that is likely to be unsuitable for award to a small-business concern due to—

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

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

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

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

“(B) does not include the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold.

“(4) **CHIEF ACQUISITION OFFICER.**—The term ‘Chief Acquisition Officer’ means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(a)).

“(5) **CONTRACT.**—The term ‘contract’ includes, for purposes of this section, any task order made pursuant to an indefinite quantity, indefinite delivery contract.

“(6) **CONTRACT BUNDLING.**—The term ‘contract bundling’ means the process by which a bundled contract is created.

“(7) **DOLLAR THRESHOLD.**—The term ‘dollar threshold’ means—

“(A) in the case of a contract for construction, \$5,000,000; and

“(B) in any other case, \$2,000,000.

“(8) **MAJOR DEFENSE ACQUISITION PROGRAM.**—The term ‘major defense acquisition program’ has the meaning given in section 2430(a) of title 10, United States Code.

“(9) **PREVIOUSLY BUNDLED CONTRACT.**—The term ‘previously bundled contract’ means a contract that is the successor to a contract that required a bundling analysis, contract for which any of the successor contract were designated as a consolidated contract or bundled contract in the Federal procurement database, or a contract for which the Administrator designated the prior contract as a bundled contract.

“(10) **PROCUREMENT ACTIVITY.**—The term ‘procurement activity’ means the Federal agency or office thereof acquiring goods or services.

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

“(12) **SENIOR PROCUREMENT EXECUTIVE.**—The term ‘senior procurement executive’ means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(c)) as the senior procurement executive for a Federal agency.

“(b) **POLICY.**—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding contract bundling are made with a view to

providing small business concerns with the maximum practicable opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

“(c) CONTRACT BUNDLING.—

“(1) PROPOSED PROCUREMENTS.—Paragraphs (2) through (4) shall apply to to a proposed procurement if the proposed procurement—

“(A) would adversely affect one or more small business concerns, including the potential loss of an existing contract;

“(B) includes, in its statement of work, goods or services—

“(i)(I) currently being performed by a small business; and

“(II) if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; or

“(ii)(I) that are of a type that the Administrator through market research can demonstrate that two or more small businesses are capable of performing; and

“(II) if the proposed procurement would be combined with other requirements for goods and services;

“(C) is for construction and—

“(i) seeks to package or combine discrete construction projects; or

“(ii) the value of the goods or services subject to the contract exceeds the dollar threshold; or

“(D) is determined by the Administrator to have a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

“(2) RESPONSIBILITY OF THE PROCUREMENT ACTIVITY.—At least 45 days prior to the issuance of a solicitation, the Procurement Activity shall notify and provide a copy of the proposed procurement to the procurement center representative assigned to the Procurement Activity. The 45-day notification process under this paragraph shall occur concurrently with other processing steps required prior to issuance of the solicitation. The notice shall include a statement setting forth the proposed procurement strategy required by subsection (e), and—

“(A) explaining why the proposed acquisition cannot be further divided into reasonably small lots or discrete tasks in order to permit offers by small business concerns;

“(B) listing, if applicable, the incumbent contractors disaggregated by and including names, addresses, and whether or not the contractor is a small business concern;

“(C) describing the industries that might be interested in bidding on the contract requirements;

“(D) delineating the number of small business concerns listed in the industry categories that could be excluded from future bidding if the contract is a bundled contract, including any small business bidders that had bid on previous procurement requirements that are included in the bundling of contract requirements;

“(E) delineating the number of existing small business concerns whose contracts will cease if the contract bundling proceeds;

“(F) explaining why the delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

“(G) explaining why the proposed acquisition cannot be offered so as to make small business participation likely;

“(H) explaining why construction cannot be procured as separate discrete projects; and

“(I) explaining why the agency has determined that the bundled contract is necessary and justified.

“(3) PUBLICATION OF NOTICE STATEMENT.—Concurrently, the statement required in paragraph (2) shall be published in the Federal contracting opportunities database.

“(4) RECOMPETITION OF A PREVIOUSLY BUNDLED CONTRACT.—If the proposed procurement is a previously bundled contract, that is to be recompeteted as a bundled contract, the Administrator shall determine, with the assistance of the agency proposing the procurement—

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

“(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;

“(C) the dollar value of subcontracts awarded to small business concerns under the bundled contract, disaggregated by North American Industrial Classification System Code;

“(D) the percentage of subcontract dollars awarded to small businesses under the bundled contract, disaggregated by North American Industrial Classification System Code; and

“(E) the dollar amount and percentage of prime contract dollars awarded to small businesses in the primary North American Industrial Classification System Code for that bundled contract during each of the two fiscal years preceding the award of the bundled contract and during each fiscal year of the performance of the bundled contract.

“(5) FAILURE TO PROVIDE NOTICE.—

“(A) NO NOTIFICATION RECEIVED.—If no notification of the proposed procurement or accompanying statement is received, but the Administrator determines that the proposed procurement is a proposed procurement described in paragraph (1), then the Administrator shall require that such a statement of work be completed by the Procurement Activity and sent to the procurement center representative and postpone the solicitation process for at least 10 days but not more than 45 days to allow the Administrator to review the statement and make recommendations as described in this section before the procurement process is continued.

“(B) NO WORK CONTINUED.—If the Administrator requires a Procurement Activity to provide a statement of work pursuant to subparagraph (A), the Procurement Activity shall not be permitted to continue with the procurement until such time as the Procurement Activity complies with the requirements of subparagraph (A).

“(6) RESPONSIBILITY OF THE PROCUREMENT CENTER REPRESENTATIVE.—Within 15 days after receipt of the proposed procurement and accompanying statement, if the procurement center representative believes that the procurement as proposed will render small business prime contract participation unlikely, the representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.

“(7) DISAGREEMENT BETWEEN THE ADMINISTRATOR AND THE PROCUREMENT ACTIVITY.—

“(A) IN GENERAL.—The Administrator may take action under this paragraph to further the interests of small businesses if—

“(i) a small business concern would be adversely affected, directly or indirectly, by the proposed procurement, and that small business concern or a trade association representing such small business concern so requests; or

“(ii) if the Administrator determines that a small business concern would be adversely affected, directly or indirectly, by the proposed procurement.

“(B) APPEAL TO AGENCY HEAD.—First, the proposed procurement shall be submitted for determination to the head of the contracting agency by the Administrator.

“(C) FAILURE TO AGREE.—Whenever the Administrator and the head of the contracting agency fail to agree—

“(i) the Administrator, within ten days after such decision, may file an appeal with the appropriate agency board of contract appeals;

“(ii) the board shall provide the Administrator and the head of the contracting agency the opportunity to provide their views on the disputed contract, except that no oral testimony or oral argument shall be permitted;

“(iii) the board shall permit interested bidders to intervene; and

“(iv) the board shall render its decision, which shall be final agency action for purposes of chapter 7 of title 5, United States Code, within 30 days after the appeal has been filed.

“(D) APPEAL BY AFFECTED SMALL BUSINESS CONCERN TO GAO.—If the Administrator takes no action pursuant to subparagraph (C), a small business concern that would be adversely affected, directly or indirectly, by the procurement as proposed, or a trade association that includes such a small business concern as a member, may file a protest with the Government Accountability Office. If the protest is filed by a trade association, the trade association shall not be required to identify a specific member in connection with the protest.

“(d) MARKET RESEARCH.—

“(1) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to bundled contracts, the head of an agency shall conduct market research to determine whether bundling of the requirements is necessary and justified.

“(2) FACTORS.—For purposes of subsection (c)(1), a bundled contract is necessary and justified if the bundling of contract requirements will result in substantial measurable benefits in excess of those benefits resulting from a procurement of the contract requirements that does not involve contract bundling.

“(3) BENEFITS.—For the purposes of bundling of contract requirements, benefits described in paragraph (2) may include the following:

- “(A) Cost savings.
- “(B) Quality improvements.
- “(C) Reduction in acquisition cycle times.
- “(D) Better terms and conditions.
- “(E) Any other benefits.

“(4) REDUCTION OF COSTS NOT DETERMINATIVE.—For purposes of this subsection:

“(A) Cost savings shall not include any reduction in the use of military interdepartmental purchase requests or any similar transfer funds among Federal agencies for the use of a contract issued by another Federal agency.

“(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be bundled.

“(5) LIMITATION ON ACQUISITION STRATEGY.—The head of a Federal agency may not carry out an acquisition strategy that includes bundled contracts valued in excess of the dollar threshold, unless the senior procurement executive or, if applicable, Chief Acquisition Officer, for the Federal agency, certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy prior to the implementation of such acquisition strategy.

“(e) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that an acquisition plan or proposed procurement strategy will result in a bundled contract, the proposed acquisition plan or procurement strategy shall—

“(1) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

“(2) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the contract bundling and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

“(3) include a specific determination that the anticipated measurable benefits of the proposed bundled contract justify its use.

“(f) CONTRACT TEAMING.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

“(g) DATABASE, ANALYSIS, AND ANNUAL REPORT REGARDING CONTRACT BUNDLING.—

“(1) DATABASE.—Not later than 180 days after the date of the enactment of this subsection, the Administrator shall develop and shall thereafter maintain a database containing data and information regarding—

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

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

“(2) ANALYSIS.—For each bundled contract that is to be recompeted, the Administrator shall determine—

“(A) the amount of savings and benefits realized, in comparison with the savings and benefits anticipated by the analysis required under subsection (d) prior to the contract award; 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.

“(3) ANNUAL REPORT ON CONTRACT BUNDLING.—

“(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administrator

shall transmit a report on contract bundling to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of 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.

“(h) BUNDLING ACCOUNTABILITY MEASURES.—

“(1) TEAMING REQUIREMENTS.—Each Federal agency shall include in each solicitation for any multiple award contract above the dollar threshold a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

“(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

“(A) IN GENERAL.—Not later than 270 days after the date of enactment of this subparagraph, the Federal Acquisition Regulatory Council, established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1302(a)), shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

“(i) establish a Government-wide policy regarding contract bundling;

“(ii) establish a Government-wide policy on the solicitation of contractor teams and joint ventures; and

“(iii) require that the policies established under clauses (i) and (ii) be published on the website of each Federal agency.

“(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits the report required under section 15(h), the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.”.

SEC. 3. REPEAL OF REDUNDANT PROVISIONS.

(a) CERTAIN PROVISIONS REGARDING CONTRACT BUNDLING REPEALED.—

(1) Section 15(a) of the Small Business Act (15 U.S.C. 644(a)), is amended by striking “If a proposed procurement includes” and all that follows through “the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.”.

(2) All references in law to such sentences as they were in effect on the date that is one day prior to the effective date of this Act shall be deemed to be references to section 44(d), as added by this Act.

(b) CERTAIN PROVISIONS REGARDING MARKET RESEARCH REPEALED.—

(1) Paragraphs (2) through (4) of section 15(e) of the Small Business Act (15 U.S.C. 644(e)) are repealed.

- (2) All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to subsections (d) through (f), respectively, of section 44 of the Small Business Act, as added by this section.
- (c) CERTAIN PROVISIONS REGARDING CONTRACT BUNDLING DATABASE REPEALED.—
- (1) Paragraph (1) of section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is repealed.
- (2) Paragraphs (2) through (4) of section 15(p) of the Small Business Act (15 U.S.C. 644(p)) are repealed. All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to paragraphs (1) through (3), respectively, of section 44(h) of the Small Business Act, as added by this Act.
- (d) CERTAIN PROVISIONS REGARDING BUNDLING ACCOUNTABILITY MEASURES REPEALED.—
- (1) Paragraphs (1) and (2) of section 15(q) of the Small Business Act (15 U.S.C. 644(q)) are repealed.
- (2) All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to paragraphs (1) and (2), respectively, of section 44(i) of the Small Business Act, as added by this Act.
- (e) CERTAIN PROVISIONS REGARDING.—Subsection (o) of section 3 of the Small Business Act (15 U.S.C.) is repealed.

SEC. 4. TECHNICAL AMENDMENTS.

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

- (1) in the heading of subsection (p), to read as follows: “ACCESS TO DATA.—”; and
- (2) in the heading of subsection (q), to read as follows: “REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4081, the “Contractor Opportunity Protection Act of 2012,” is to amend the Small Business Act (the Act)¹ to collect all provisions concerning contract bundling currently in the Act and transfer them to a revised Section 44. In addition to making this significant clarifying change, the bill strengthens the requirements that agencies must demonstrate before they are entitled to bundle or consolidate contracts that would have, absent such bundling or consolidation, been able to be performed by small businesses.

III. NEED FOR LEGISLATION

The Committee has a long history of oversight with respect to contract bundling. Throughout several Congresses, the Committee has held a number of hearings on contract bundling, submitted letters objecting to various procurement strategies that bundle contracts, and met with procurements official to express concerns at contracting strategies which led to bundled contracts.

Section 3(o)(2) of the Act defines the bundling of contract requirements as:

consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

¹ Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232, was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85–536, § 1, 72nd Stat., 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657q.

- (A) the diversity, size, or specialized nature of the elements of the performance specified;
- (B) the aggregate dollar value of the anticipated award;
- (C) the geographical dispersion of the contract performance sites; or
- (D) any combination of the factors described in subparagraphs (A), (B), and (C).

15 U.S.C. § 632(o)(2).

However, since the Act proceeds to define “separate smaller contract” as “a contract that has been performed by one or more small business concerns or was suitable for award to one or more small business concerns,” some agencies have interpreted it as not applying to new construction, since new construction, by definition, has not previously been performed by small businesses.²

The Act requires each federal department and agency to: (1) structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and (2) avoid unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors. However, agencies do not apply these requirements consistently to new construction work. Likewise, the Federal Acquisition Regulation (FAR) provisions intended to protect small businesses from unjustified bundling may not be included when the contracting officer (CO) is evaluating the requirement.³ In some cases, the Act recognizes that contract bundling may be more efficient, save money or be necessary in order to support specific technical, quality, or design requirements and must be permitted.⁴ Even the President acknowledges that bundled procurements limit competition and do not allow small businesses to compete for government business, so their effect must be mitigated.⁵ Balancing the benefits of bundling against its disadvantages may be complex, but it needs to be addressed to ensure small businesses have a fair opportunity to compete.

As currently drafted, the Act uses both the terms “contract consolidation” and “contract bundling”, as well as placing items relevant to these processes scattered throughout the Act. This makes understanding this complex topic more difficult as locating relevant portions is extremely challenging for both small businesses and contracting officers. In addition, the use of the words consolidation and bundling adds an unnecessary degree of obfuscation that simply is unnecessary.

Given that, this legislation consolidates and revises the Act to place items related to bundling and consolidation in one section of the Act. It also removes the term “consolidation” to ensure that there is not confusion between the two terms. Additionally, due to the negative effects bundling can have on small firms, this legisla-

²*Id.* at § 632(o)(3).

³These include: (1) conducting market research to determine whether bundling is needed and justified; (2) justifying the determinations in acquisition strategy documentation that identifies measurably substantial benefits that meet the statutory and regulatory requirements; and (3) conferring with SBA representatives on their acquisition strategies. 48 C.F.R. §§ 7.103–105, 8.404, 15.304(c), 16.505(a), and 19.4.

⁴15 U.S.C. § 644(a).

⁵National Economic Council, *The Small Business Agenda: Growing America’s Small Businesses to Win the Future 19* (2011) available at <http://www.sba.gov/sites/default/files/Small%20Business%20Agenda%20NEC.pdf>.

tion aims to provide a stronger process to appeal unjustified bundling through clarification of the statutory limits on bundling, the creation of a third party arbiter, and by increasing transparency in the contracting process.

IV. HEARINGS

Issues related to contract bundling were addressed at multiple hearings held to consider federal government contracting at both the full and subcommittee levels. One hearing, conducted by the Subcommittee on Contracting and Workforce entitled “Construction Contracting: Barriers to Small Business Participation” on February 9, 2012, focused specifically on contract bundling and consolidation in federal procurement for construction services.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 22, 2012, and ordered H.R. 4081 reported, as amended, to the House by a voice vote at 10:32 a.m. During the markup, one amendment was offered as a complete substitute and adopted in lieu of H.R. 4081. Disposition of the amendment is addressed below.

Amendment Number One filed by Mr. Graves (R-MO) offered an amendment in the form of a substitute. Amendment Number One was adopted by a voice vote at 10:32 a.m.

AMENDMENT TO H.R. 4081

OFFERED BY MR. GRAVES OF MISSOURI

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Contractor Opportunity Protection Act of 2012”.

SEC. 2. CONSOLIDATION OF PROVISIONS RELATING TO CONTRACT BUNDLING.

Section 44 of the Small Business Act (15 U.S.C. 657q) is amended to read as follows:

“SEC. 44. CONTRACT BUNDLING.

“(a) **DEFINITIONS.**—In this Act:

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“(A) means a contract that is entered into to meet procurement requirements that are combined in a bundling of contract requirements, without regard to whether a study of the effects of the solicitation on Federal officers or employees has been made; and

“(B) does not include—

“(i) a contract with an aggregate dollar value below the dollar threshold; or

“(ii) a single award contract for the acquisition of a weapons system acquired through a major defense acquisition.

“(2) **BUNDLING METHODOLOGY.**—The term ‘bundling methodology’ means—

“(A) a solicitation to obtain offers for a single contract or a multiple award contract;

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

“(C) the creation of any new procurement requirements that permits a combination of contract requirements, including any combination of contract requirements or order requirements.

“(3) BUNDLING OF CONTRACT REQUIREMENTS.—The term ‘bundling of contract requirements’, with respect to the contract requirements of a Federal agency—

“(A) means the use of any bundling methodology to satisfy 2 or more procurement requirements for new or existing goods or services provided to or performed for the Federal agency, including any construction services, that is likely to be unsuitable for award to a small-business concern due to—

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

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

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

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

“(B) does not include the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold.

“(4) CHIEF ACQUISITION OFFICER.—The term ‘Chief Acquisition Officer’ means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(a)).

“(5) CONTRACT.—The term ‘contract’ includes, for purposes of this section, any task order made pursuant to an indefinite quantity, indefinite delivery contract.

“(6) CONTRACT BUNDLING.—The term ‘contract bundling’ means the process by which a bundled contract is created.

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“(A) in the case of a contract for construction, \$5,000,000; and

“(B) in any other case, \$2,000,000.

“(8) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ‘major defense acquisition program’ has the meaning given in section 2430(a) of title 10, United States Code.

“(9) PREVIOUSLY BUNDLED CONTRACT.—The term ‘previously bundled contract’ means a contract that is the successor to a contract that required a bundling analysis, contract for which any of the successor contract were designated as a consolidated contract or bundled contract in the Federal procurement database, or a contract for which the Administrator designated the prior contract as a bundled contract.

“(10) PROCUREMENT ACTIVITY.—The term ‘procurement activity’ means the Federal agency or office thereof acquiring goods or services.

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

“(12) SENIOR PROCUREMENT EXECUTIVE.—The term ‘senior procurement executive’ means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(c)) as the senior procurement executive for a Federal agency.

“(b) POLICY.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding contract bundling are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

“(c) CONTRACT BUNDLING.—

“(1) PROPOSED PROCUREMENTS.—Paragraphs (2) through (4) shall apply to a proposed procurement if the proposed procurement—

“(A) would adversely affect one or more small business concerns, including the potential loss of an existing contract;

“(B) includes, in its statement of work, goods or services—

“(i)(I) currently being performed by a small business; and

“(II) if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; or

“(ii)(I) that are of a type that the Administrator through market research can demonstrate that two or more small businesses are capable of performing; and

“(II) if the proposed procurement would be combined with other requirements for goods and services;

“(C) is for construction and—

“(i) seeks to package or combine discrete construction projects; or

“(ii) the value of the goods or services subject to the contract exceeds the dollar threshold; or

“(D) is determined by the Administrator to have a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

“(2) RESPONSIBILITY OF THE PROCUREMENT ACTIVITY.—At least 45 days prior to the issuance of a solicitation, the Procurement Activity shall notify and provide a copy of the proposed procurement to the procurement center representative assigned to the Procurement Activity. The 45-day notification process under this paragraph shall occur concurrently with other processing steps required prior to issuance of the solicitation. The notice shall include a statement setting forth the proposed procurement strategy required by subsection (e), and—

“(A) explaining why the proposed acquisition cannot be further divided into reasonably small lots or discrete tasks in order to permit offers by small business concerns;

“(B) listing, if applicable, the incumbent contractors disaggregated by and including names, addresses, and whether or not the contractor is a small business concern;

“(C) describing the industries that might be interested in bidding on the contract requirements;

“(D) delineating the number of small business concerns listed in the industry categories that could be excluded from future bidding if the contract is a bundled contract, including any small business bidders that had bid on previous procurement requirements that are included in the bundling of contract requirements;

“(E) delineating the number of existing small business concerns whose contracts will cease if the contract bundling proceeds;

“(F) explaining why the delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

“(G) explaining why the proposed acquisition cannot be offered so as to make small business participation likely;

“(H) explaining why construction cannot be procured as separate discrete projects; and

“(I) explaining why the agency has determined that the bundled contract is necessary and justified.

“(3) PUBLICATION OF NOTICE STATEMENT.—Concurrently, the statement required in paragraph (2) shall be published in the Federal contracting opportunities database.

“(4) RECOMPETITION OF A PREVIOUSLY BUNDLED CONTRACT.—If the proposed procurement is a previously bundled contract, that is to be recompeted as a bundled contract, the Administrator shall determine, with the assistance of the agency proposing the procurement—

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

“(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;

“(C) the dollar value of subcontracts awarded to small business concerns under the bundled contract, disaggregated by North American Industrial Classification System Code;

“(D) the percentage of subcontract dollars awarded to small businesses under the bundled contract, disaggregated by North American Industrial Classification System Code; and

“(E) the dollar amount and percentage of prime contract dollars awarded to small businesses in the primary North American Industrial Classification System Code for that bundled contract during each of the two fiscal years pre-

ceding the award of the bundled contract and during each fiscal year of the performance of the bundled contract.

“(5) FAILURE TO PROVIDE NOTICE.—

“(A) NO NOTIFICATION RECEIVED.—If no notification of the proposed procurement or accompanying statement is received, but the Administrator determines that the proposed procurement is a proposed procurement described in paragraph (1), then the Administrator shall require that such a statement of work be completed by the Procurement Activity and sent to the procurement center representative and postpone the solicitation process for at least 10 days but not more than 45 days to allow the Administrator to review the statement and make recommendations as described in this section before the procurement process is continued.

“(B) NO WORK CONTINUED.—If the Administrator requires a Procurement Activity to provide a statement of work pursuant to subparagraph (A), the Procurement Activity shall not be permitted to continue with the procurement until such time as the Procurement Activity complies with the requirements of subparagraph (A).

“(6) RESPONSIBILITY OF THE PROCUREMENT CENTER REPRESENTATIVE.—Within 15 days after receipt of the proposed procurement and accompanying statement, if the procurement center representative believes that the procurement as proposed will render small business prime contract participation unlikely, the representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.

“(7) DISAGREEMENT BETWEEN THE ADMINISTRATOR AND THE PROCUREMENT ACTIVITY.—

“(A) IN GENERAL.—The Administrator may take action under this paragraph to further the interests of small businesses if—

“(i) a small business concern would be adversely affected, directly or indirectly, by the proposed procurement, and that small business concern or a trade association representing such small business concern so requests; or

“(ii) if the Administrator determines that a small business concern would be adversely affected, directly or indirectly, by the proposed procurement.

“(B) APPEAL TO AGENCY HEAD.—First, the proposed procurement shall be submitted for determination to the head of the contracting agency by the Administrator.

“(C) FAILURE TO AGREE.—Whenever the Administrator and the head of the contracting agency fail to agree—

“(i) the Administrator, within ten days after such decision, may file an appeal with the appropriate agency board of contract appeals;

“(ii) the board shall provide the Administrator and the head of the contracting agency the opportunity to provide their views on the disputed contract, except that no oral testimony or oral argument shall be permitted;

“(iii) the board shall permit interested bidders to intervene; and

“(iv) the board shall render its decision, which shall be final agency action for purposes of chapter 7 of title 5, United States Code, within 30 days after the appeal has been filed.

“(D) APPEAL BY AFFECTED SMALL BUSINESS CONCERN TO GAO.—If the Administrator takes no action pursuant to subparagraph (C), a small business concern that would be adversely affected, directly or indirectly, by the procurement as proposed, or a trade association that includes such a small business concern as a member, may file a protest with the Government Accountability Office. If the protest is filed by a trade association, the trade association shall not be required to identify a specific member in connection with the protest.

“(d) MARKET RESEARCH.—

“(1) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to bundled contracts, the head of an agency shall conduct market research to determine whether bundling of the requirements is necessary and justified.

“(2) FACTORS.—For purposes of subsection (c)(1), a bundled contract is necessary and justified if the bundling of contract requirements will result in substantial measurable benefits in excess of those benefits resulting from a procurement of the contract requirements that does not involve contract bundling.

“(3) BENEFITS.—For the purposes of bundling of contract requirements, benefits described in paragraph (2) may include the following:

“(A) Cost savings.

“(B) Quality improvements.

“(C) Reduction in acquisition cycle times.

“(D) Better terms and conditions.

“(E) Any other benefits.

“(4) REDUCTION OF COSTS NOT DETERMINATIVE.—For purposes of this subsection:

“(A) Cost savings shall not include any reduction in the use of military interdepartmental purchase requests or any similar transfer funds among Federal agencies for the use of a contract issued by another Federal agency.

“(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be bundled.

“(5) LIMITATION ON ACQUISITION STRATEGY.—The head of a Federal agency may not carry out an acquisition strategy that includes bundled contracts valued in excess of the dollar threshold, unless the senior procurement executive or, if applicable, Chief Acquisition Officer, for the Federal agency, certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy prior to the implementation of such acquisition strategy.

“(e) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that an acquisition plan or proposed procure-

ment strategy will result in a bundled contract, the proposed acquisition plan or procurement strategy shall—

“(1) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

“(2) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the contract bundling and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

“(3) include a specific determination that the anticipated measurable benefits of the proposed bundled contract justify its use.

“(f) CONTRACT TEAMING.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

“(g) DATABASE, ANALYSIS, AND ANNUAL REPORT REGARDING CONTRACT BUNDLING.—

“(1) DATABASE.—Not later than 180 days after the date of the enactment of this subsection, the Administrator shall develop and shall thereafter maintain a database containing data and information regarding—

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

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

“(2) ANALYSIS.—For each bundled contract that is to be re-competed, the Administrator shall determine—

“(A) the amount of savings and benefits realized, in comparison with the savings and benefits anticipated by the analysis required under subsection (d) prior to the contract award; 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.

“(3) ANNUAL REPORT ON CONTRACT BUNDLING.—

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

“(h) BUNDLING ACCOUNTABILITY MEASURES.—

“(1) TEAMING REQUIREMENTS.—Each Federal agency shall include in each solicitation for any multiple award contract above the dollar threshold a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

“(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

“(A) IN GENERAL.—Not later than 270 days after the date of enactment of this subparagraph, the Federal Acquisition Regulatory Council, established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1302(a)), shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

“(i) establish a Government-wide policy regarding contract bundling;

“(ii) establish a Government-wide policy on the solicitation of contractor teams and joint ventures; and

“(iii) require that the policies established under clauses (i) and (ii) be published on the website of each Federal agency.

“(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits the report required under section 15(h), the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.”.

SEC. 3. REPEAL OF REDUNDANT PROVISIONS.

(a) CERTAIN PROVISIONS REGARDING CONTRACT BUNDLING REPEALED.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)), is amended by striking “If a proposed procurement includes” and all that follows through “the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.”. All references in law to such sentences as they were in effect on the date that is 1 day prior to the effective date of this Act shall be deemed to be references to section 44(d), as added by this Act.

(b) CERTAIN PROVISIONS REGARDING MARKET RESEARCH REPEALED.—Paragraphs (2) through (4) of section 15(e) of the Small Business Act (15 U.S.C. 644(e)) are repealed. All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to subsections (d) through (f), respectively, of section 44 of the Small Business Act, as added by this section.

(c) CERTAIN PROVISIONS REGARDING CONTRACT BUNDLING DATABASE REPEALED.—

(1) Paragraph (1) of section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is repealed.

(2) Paragraphs (2) through (4) of section 15(p) of the Small Business Act (15 U.S.C. 644(p)) are repealed. All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to paragraphs (1) through (3), respectively, of section 44(h) of the Small Business Act, as added by this Act.

(d) CERTAIN PROVISIONS REGARDING BUNDLING ACCOUNTABILITY MEASURES REPEALED.—Paragraphs (1) and (2) of section 15(q) of the Small Business Act (15 U.S.C. 644(q)) are repealed. All references in law to such paragraphs, as in effect on the date that is one day prior to the effective date of this Act, shall be deemed to be references to paragraphs (1) and (2), respectively, of section 44(i) of the Small Business Act, as added by this Act.

(e) CERTAIN PROVISIONS REGARDING.—Subsection (o) of section 3 of the Small Business Act (15 U.S.C.) is repealed.

SEC. 4. TECHNICAL AMENDMENTS.

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

(1) in the subsection heading of subsection (p), to read as follows: “ACCESS TO DATA.”; and

(2) in the subsection heading of subsection (p), to read as follows: “REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.”.

SEC. 5. EXPANSION OF AGENCY'S RESPONSIBILITY.

Section 44(b) of the Small Business Act (15 U.S.C. 657q(b)) is amended by striking “appropriate” and inserting “the maximum practicable”.

VI. SECTION-BY-SECTION ANALYSIS OF H.R. 4081**SECTION-BY-SECTION ANALYSIS OF H.R. 4081 AS AMENDED***Section 1—Short title*

This section provides that the bill may be cited as the “Contractor Opportunity Protection Act of 2012.”

*Section 2—Consolidation of provisions relating to contract bundling**Subsection (a)—Definitions*

This subsection amends section 44 of the Act to consolidate and revise definitions related to contract consolidation and contract bundling into one section of the Act. Specifically, the bill removes all definitions related to consolidation and replaces them with revised definitions of contract bundling to promote accurate understanding of what contracts should and should not be included.

Paragraph (1) defines “bundled contract.” The revised definitions exclude contracts related below specified dollar thresholds and contracts for major defense acquisition programs. Contracts resulting from studies conducted pursuant to Office of Management and Budget Circular A-76 are included.

Paragraph (2) defines “bundling methodology” or the process by which bundling occurs. This clarifies that bundling may occur on: (1) single award contracts and multiple award contracts; (2) contracts and task orders; and (3) when a new requirement is included in a solicitation. Previously, bundling was only considered to occur on previously awarded requirements contracts and only at the contract level, so this definitional change will more accurately capture the process.

Paragraph (3) defines “bundling of contract requirements” as a procurement that uses a bundling methodology if the resultant procurement is unsuitable for award to small businesses. It may be unsuitable due to the value of the contract, the number of discrete requirements being combined, the complexity of discrete requirements, the geographic dispersal of the requirements, or any combination thereof.

Paragraph (4) defines “Chief Acquisition Officer” by assigning it the definition at 41 U.S.C. § 1702(a). Chief Acquisition Officers (CAOs) are responsible for the acquisition programs of their respective agencies.

Paragraph (5) defines the term “contract.” This clarifies that for purposes of contracting bundling, a task order issued on an indefinite delivery, indefinite quantity contract shall itself be considered a contract.

Paragraph (6) defines “contract bundling.” Contract bundling is the process by which a bundled contract is created.

Paragraph (7) defines the term “dollar threshold” used in paragraph (1). The dollar thresholds specified are \$5 million for construction contracts or \$2 million for other contracts.

Paragraph (8) defines “major defense acquisition program,” which is used in paragraph (1). The definition is taken from 10 U.S.C. § 2430(a).

Paragraph (9) defines a “previously bundled contract.” A previously bundled contract may be the successor to a contract that required bundling analysis, or for which any of the successor contracts were designated as a consolidated contract or bundled contract in the Federal Procurement Data System. This definition will ensure that as the understanding of bundling evolves, prior data is not lost.

Paragraph (10) defines “procurement activity.” A procurement activity is an agency or subdivision thereof that is acquiring goods or services.

Paragraph (11) defines “procurement requirement.” Procurement requirements are what are being bundled. Therefore, H.R. 4081 defines procurement requirements as a determination by an agency that it needs a good or service. It is expected that this determination will lead to the eventual purchase of the good or service.

Paragraph (12) defines “Senior Procurement Executive,” by assigning it the definition at 41 U.S.C. § 1702(c). At agencies without CAOs, Senior Procurement Executives (SPEs) are responsible for the acquisition programs of the agency. At agencies with CAOs, the CAO is either the SPE or supervises the SPE.

Subsection (b)—I

This subsection amends section 44 of the Act to require that the head of each Federal agency ensure that decisions made by the Federal agency requiring contract bundling are made with a view to providing small business concerns with appropriate opportunities. This furthers the goal of the Act to provide small business concerns with the maximum practicable opportunity to participate in federal contracting.

Subsection (c)—Contract bundling

Subsection (c) of the bill amends section 44 of the Act by: (1) clarifying when the process needed to bundle contracts apply; (2) modifies the procedures used to consider bundled contracts; and (3) establishes more robust dispute resolution mechanisms concerning bundled contracts. Specifically, this subsection provides that at least 45 days prior to issuing a solicitation, a procurement center representative (PCR) be notified and provided a copy of the proposed procurement. Previously, the PCR only received 30 days notice. Additionally, this subsection delineates what content must be provided in a statement accompanying the notice and that the notice statement be published in the Federal contracting opportunities database. This public notice requirement is new, and will allow more small businesses the chance to be heard on the affects of proposed bundling. This subsection retains the requirement that, within 15 days of receiving the proposed procurement notice, a PCR believing that small businesses will not be able to compete as prime contractors shall recommend alternative procurement methods to increase small business prime contracting opportunities. Further, this section outlines the steps which must be completed in order to recompet a previously bundled contract. The SBA Administrator retains the ability to challenge a bundled contract if the Adminis-

trator believes a small firm would be adversely affected and appeal to the head of the agency, but a new process is added: if the Administrator and head of the agency disagree as to the effect a bundled contract would have on small firms, the Administrator may now appeal within 10 days to the appropriate Agency's board of contract appeals and receive a decision within 30 days of filing the appeal. Finally, this subsection allows small business concerns, or a trade association that include such a small business concern as a member, to file a protest with the Government Accountability Office (GAO) if the SBA Administrator fails to take action regarding a bundled contract. While small businesses have the ability to file GAO protests under the current law, they are rarely considered interested parties. This will make their appeal rights more fruitful, and allow GAO and the Boards of Contract Appeals to begin developing substantive case law regarding justified contract bundling.

Subsection (d)—Market research

This subsection requires that prior to proceeding to an acquisition strategy that could lead to a bundled contract the head of an agency shall conduct market research to determine whether such bundling is necessary and justified. The provisions of the subsection, for the most part, restate existing statutory requirements. However, subsection (d) adds a new limitation on acquisition strategy that prohibits bundled contracts in excess of the dollar thresholds unless a senior procurement executive or the federal agency's CAO certifies to the head of the federal agency that steps will be taken to include small business concerns.

Subsection (e)—Strategy specifications

This subsection continues to allow the head of the contracting agency to identify specifically the benefits anticipated from the bundled contract and set forth an assessment of the specific impediments to participation by small business concerns as prime contractors and include a specific determination of measurable benefits that could justify the proposed bundled contract. This recodification is not intended to modify existing practices.

Subsection (f)—Contract teaming

This subsection continues to allow small businesses to submit an offer that uses a particular team of subcontractors for the performance of the contract. This recodification is not intended to modify existing practices.

Subsection (g)—Database, analysis, and annual report regarding contract bundling

This subsection continues to require the use of database to record information regarding bundled contracts. For analysis, this subsection adds requirements that the amount of savings and benefits realized be compared with the savings and benefits anticipated by the analysis required prior to the contract award. Additionally, this subsection would now report the annual report on contract bundling to be submitted to the House Small Business Committee and Senate Small Business and Entrepreneurship Committees.

Subsection (h)—Bundling accountability measures

This subsection continues to allow teaming or joint ventures by small business concerns for multiple award contracts above the dollar threshold. Additionally, this subsection continues to enforce policies promoting the reduction of contract bundling. This recodification is not intended to modify existing practices or accountability measures.

Section 3—Repeal of redundant provisions

This section repeals provisions related to contract bundling throughout the Small Business Act which, in light of changes made in this bill, would be redundant or duplicative.

Section 4—Technical amendments

This section amends section 15 of the Small Business Act to make technical corrections.

Section 5—Expansion of agency’s responsibility

This section amends section 44(b) of the Small Business Act to strike “appropriate” and insert “to the maximum practicable.” This will make section 44 consistent with the rest of the Act. More importantly, it does not allow agencies to usurp Congress’s role by determining that an amount less than the maximum practicable utilization of small businesses is appropriate.

VII. UNFUNDED MANDATES

H.R. 4081 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104–4, and would impose no costs on state, local or tribal governments.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures.

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974. The Committee recognizes that the clarification of bundling in the Small Business Act will require additional work be performed by contracting officers. However, there is no way to estimate what those costs might be because agencies have generally failed to comply with extant requirements to analyze bundles. Had agencies been complying with the Act, it is likely that the cost incurred to comply with this legislation would be minimal.

IX. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter con-

tained in H.R. 4081 are incorporated into the descriptive portions of this report.

X. 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 Art. I, § 8, cls. 1, 3, and 18 and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XI. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4081 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104–1.

XII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 4081 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XIII. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 4081 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XIV. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 4081 includes provisions to amend the Small Business Act to consolidate and revise provisions related to contract bundling to enhance transparency in contract bundling and increase federal procurement opportunities for small business concerns.

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

SMALL BUSINESS ACT

*	*	*	*	*	*	*
SEC. 3. (a)	*	*	*			
	*	*	*	*	*	*

[(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

[(1) BUNDLED CONTRACT.—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

[(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

[(A) the diversity, size, or specialized nature of the elements of the performance specified;

[(B) the aggregate dollar value of the anticipated award;

[(C) the geographical dispersion of the contract performance sites; or

[(D) any combination of the factors described in subparagraphs (A), (B), and (C).

[(3) SEPARATE SMALLER CONTRACT.—The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.]

* * * * *

SEC. 15. (a) To effectuate the purposes of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. [If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business

participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.】 For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a “United States industry” under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

* * * * *

(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) * * *

【(2) MARKET RESEARCH.—

【(A) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

【(B) FACTORS.—For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in com-

mination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- [(i) Cost savings.
- [(ii) Quality improvements.
- [(iii) Reduction in acquisition cycle times.
- [(iv) Better terms and conditions.
- [(v) Any other benefits.

[(C) REDUCTION OF COSTS NOT DETERMINATIVE.—The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

[(3) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

[(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

[(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

[(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

[(4) CONTRACT TEAMING.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.】

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

[(1) BUNDLED CONTRACT DEFINED.—In this subsection, the term “bundled contract” has the meaning given such term in section 3(o)(1).

[(2) DATABASE.—

[(A) IN GENERAL.—Not later than 180 days after the date of the 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 re-competed 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 the 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, includ-

ing a description of any changes to the proportion of any such industry that is composed of small business concerns.]

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(q) **[BUNDLING ACCOUNTABILITY MEASURES] REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—**

[(1) TEAMING REQUIREMENTS.—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

[(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

[(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

[(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

[(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

[(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.]

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[SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.

[(a) DEFINITIONS.—In this section—

[(1) the term “Chief Acquisition Officer” means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a));

[(2) the term “consolidation of contract requirements”, with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and

[(3) the term “senior procurement executive” means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)) as the senior procurement executive for a Federal agency.

[(b) POLICY.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation

of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

[(c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—

[(1) IN GENERAL.—Subject to paragraph (4), the head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than \$2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

[(A) conducts market research;

[(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

[(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

[(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

[(E) certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy.

[(2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.—

[(A) IN GENERAL.—A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

[(B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

[(3) BENEFITS TO BE CONSIDERED.—The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

[(A) quality;

[(B) acquisition cycle;

[(C) terms and conditions; and

[(D) any other benefit.

[(4) DEPARTMENT OF DEFENSE.—

[(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

[(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a mili-

tary department shall be conducted in accordance with section 2382 of title 10, United States Code.

[(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 15.]

SEC. 44. CONTRACT BUNDLING.

(a) *DEFINITIONS.—In this Act:*

(1) *BUNDLED CONTRACT.—The term “bundled contract”—*

(A) means a contract that is entered into to meet procurement requirements that are combined in a bundling of contract requirements, without regard to whether a study of the effects of the solicitation on Federal officers or employees has been made; and

(B) does not include—

(i) a contract with an aggregate dollar value below the dollar threshold; or

(ii) a single award contract for the acquisition of a weapons system acquired through a major defense acquisition.

(2) *BUNDLING METHODOLOGY.—The term “bundling methodology” means—*

(A) a solicitation to obtain offers for a single contract or a multiple award contract;

(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract; or

(C) the creation of any new procurement requirements that permits a combination of contract requirements, including any combination of contract requirements or order requirements.

(3) *BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements”, with respect to the contract requirements of a Federal agency—*

(A) means the use of any bundling methodology to satisfy 2 or more procurement requirements for new or existing goods or services provided to or performed for the Federal agency, including any construction services, that is likely to be unsuitable for award to a small-business concern due to—

(i) the diversity, size, or specialized nature of the elements of the performance specified;

(ii) the aggregate dollar value of the anticipated award;

(iii) the geographical dispersion of the contract performance sites; or

(iv) any combination of the factors described in clauses (i), (ii), and (iii); and

(B) does not include the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold.

(4) *CHIEF ACQUISITION OFFICER.—The term “Chief Acquisition Officer” means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under sec-*

tion 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(a)).

(5) *CONTRACT*.—The term “contract” includes, for purposes of this section, any task order made pursuant to an indefinite quantity, indefinite delivery contract.

(6) *CONTRACT BUNDLING*.—The term “contract bundling” means the process by which a bundled contract is created.

(7) *DOLLAR THRESHOLD*.—The term “dollar threshold” means—

(A) in the case of a contract for construction, \$5,000,000; and

(B) in any other case, \$2,000,000.

(8) *MAJOR DEFENSE ACQUISITION PROGRAM*.—The term “major defense acquisition program” has the meaning given in section 2430(a) of title 10, United States Code.

(9) *PREVIOUSLY BUNDLED CONTRACT*.—The term “previously bundled contract” means a contract that is the successor to a contract that required a bundling analysis, contract for which any of the successor contract were designated as a consolidated contract or bundled contract in the Federal procurement database, or a contract for which the Administrator designated the prior contract as a bundled contract.

(10) *PROCUREMENT ACTIVITY*.—The term “procurement activity” means the Federal agency or office thereof acquiring goods or services.

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

(12) *SENIOR PROCUREMENT EXECUTIVE*.—The term “senior procurement executive” means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 1702(c)) as the senior procurement executive for a Federal agency.

(b) *POLICY*.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding contract bundling are made with a view to providing small business concerns with the maximum practicable opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

(c) *CONTRACT BUNDLING*.—

(1) *PROPOSED PROCUREMENTS*.—Paragraphs (2) through (4) shall apply to a proposed procurement if the proposed procurement—

(A) would adversely affect one or more small business concerns, including the potential loss of an existing contract;

(B) includes, in its statement of work, goods or services—
(i)(I) currently being performed by a small business; and

(II) if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; or

(ii)(I) that are of a type that the Administrator through market research can demonstrate that two or more small businesses are capable of performing; and
 (II) if the proposed procurement would be combined with other requirements for goods and services;

(C) is for construction and—

(i) seeks to package or combine discrete construction projects; or

(ii) the value of the goods or services subject to the contract exceeds the dollar threshold; or

(D) is determined by the Administrator to have a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(2) **RESPONSIBILITY OF THE PROCUREMENT ACTIVITY.**—At least 45 days prior to the issuance of a solicitation, the Procurement Activity shall notify and provide a copy of the proposed procurement to the procurement center representative assigned to the Procurement Activity. The 45-day notification process under this paragraph shall occur concurrently with other processing steps required prior to issuance of the solicitation. The notice shall include a statement setting forth the proposed procurement strategy required by subsection (e), and—

(A) explaining why the proposed acquisition cannot be further divided into reasonably small lots or discrete tasks in order to permit offers by small business concerns;

(B) listing, if applicable, the incumbent contractors disaggregated by and including names, addresses, and whether or not the contractor is a small business concern;

(C) describing the industries that might be interested in bidding on the contract requirements;

(D) delineating the number of small business concerns listed in the industry categories that could be excluded from future bidding if the contract is a bundled contract, including any small business bidders that had bid on previous procurement requirements that are included in the bundling of contract requirements;

(E) delineating the number of existing small business concerns whose contracts will cease if the contract bundling proceeds;

(F) explaining why the delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(G) explaining why the proposed acquisition cannot be offered so as to make small business participation likely;

(H) explaining why construction cannot be procured as separate discrete projects; and

(I) explaining why the agency has determined that the bundled contract is necessary and justified.

(3) **PUBLICATION OF NOTICE STATEMENT.**—Concurrently, the statement required in paragraph (2) shall be published in the Federal contracting opportunities database.

(4) **RECOMPETITION OF A PREVIOUSLY BUNDLED CONTRACT.**—If the proposed procurement is a previously bundled contract, that is to be recompeted as a bundled contract, the Adminis-

trator shall determine, with the assistance of the agency proposing the procurement—

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

(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;

(C) the dollar value of subcontracts awarded to small business concerns under the bundled contract, disaggregated by North American Industrial Classification System Code;

(D) the percentage of subcontract dollars awarded to small businesses under the bundled contract, disaggregated by North American Industrial Classification System Code; and

(E) the dollar amount and percentage of prime contract dollars awarded to small businesses in the primary North American Industrial Classification System Code for that bundled contract during each of the two fiscal years preceding the award of the bundled contract and during each fiscal year of the performance of the bundled contract.

(5) FAILURE TO PROVIDE NOTICE.—

(A) NO NOTIFICATION RECEIVED.—If no notification of the proposed procurement or accompanying statement is received, but the Administrator determines that the proposed procurement is a proposed procurement described in paragraph (1), then the Administrator shall require that such a statement of work be completed by the Procurement Activity and sent to the procurement center representative and postpone the solicitation process for at least 10 days but not more than 45 days to allow the Administrator to review the statement and make recommendations as described in this section before the procurement process is continued.

(B) NO WORK CONTINUED.—If the Administrator requires a Procurement Activity to provide a statement of work pursuant to subparagraph (A), the Procurement Activity shall not be permitted to continue with the procurement until such time as the Procurement Activity complies with the requirements of subparagraph (A).

(6) RESPONSIBILITY OF THE PROCUREMENT CENTER REPRESENTATIVE.—Within 15 days after receipt of the proposed procurement and accompanying statement, if the procurement center representative believes that the procurement as proposed will render small business prime contract participation unlikely, the representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.

(7) DISAGREEMENT BETWEEN THE ADMINISTRATOR AND THE PROCUREMENT ACTIVITY.—

(A) IN GENERAL.—The Administrator may take action under this paragraph to further the interests of small businesses if—

(i) a small business concern would be adversely affected, directly or indirectly, by the proposed procurement, and that small business concern or a trade association representing such small business concern so requests; or

(ii) if the Administrator determines that a small business concern would be adversely affected, directly or indirectly, by the proposed procurement.

(B) APPEAL TO AGENCY HEAD.—First, the proposed procurement shall be submitted for determination to the head of the contracting agency by the Administrator.

(C) FAILURE TO AGREE.—Whenever the Administrator and the head of the contracting agency fail to agree—

(i) the Administrator, within ten days after such decision, may file an appeal with the appropriate agency board of contract appeals;

(ii) the board shall provide the Administrator and the head of the contracting agency the opportunity to provide their views on the disputed contract, except that no oral testimony or oral argument shall be permitted;

(iii) the board shall permit interested bidders to intervene; and

(iv) the board shall render its decision, which shall be final agency action for purposes of chapter 7 of title 5, United States Code, within 30 days after the appeal has been filed.

(D) APPEAL BY AFFECTED SMALL BUSINESS CONCERN TO GAO.—If the Administrator takes no action pursuant to subparagraph (C), a small business concern that would be adversely affected, directly or indirectly, by the procurement as proposed, or a trade association that includes such a small business concern as a member, may file a protest with the Government Accountability Office. If the protest is filed by a trade association, the trade association shall not be required to identify a specific member in connection with the protest.

(d) MARKET RESEARCH.—

(1) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to bundled contracts, the head of an agency shall conduct market research to determine whether bundling of the requirements is necessary and justified.

(2) FACTORS.—For purposes of subsection (c)(1), a bundled contract is necessary and justified if the bundling of contract requirements will result in substantial measurable benefits in excess of those benefits resulting from a procurement of the contract requirements that does not involve contract bundling.

(3) BENEFITS.—For the purposes of bundling of contract requirements, benefits described in paragraph (2) may include the following:

(A) Cost savings.

(B) Quality improvements.

(C) Reduction in acquisition cycle times.

(D) Better terms and conditions.

(E) Any other benefits.

(4) *REDUCTION OF COSTS NOT DETERMINATIVE.*—For purposes of this subsection:

(A) Cost savings shall not include any reduction in the use of military interdepartmental purchase requests or any similar transfer funds among Federal agencies for the use of a contract issued by another Federal agency.

(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be bundled.

(5) *LIMITATION ON ACQUISITION STRATEGY.*—The head of a Federal agency may not carry out an acquisition strategy that includes bundled contracts valued in excess of the dollar threshold, unless the senior procurement executive or, if applicable, Chief Acquisition Officer, for the Federal agency, certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy prior to the implementation of such acquisition strategy.

(e) *STRATEGY SPECIFICATIONS.*—If the head of a contracting agency determines that an acquisition plan or proposed procurement strategy will result in a bundled contract, the proposed acquisition plan or procurement strategy shall—

(1) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(2) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the contract bundling and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(3) include a specific determination that the anticipated measurable benefits of the proposed bundled contract justify its use.

(f) *CONTRACT TEAMING.*—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

(g) *DATABASE, ANALYSIS, AND ANNUAL REPORT REGARDING CONTRACT BUNDLING.*—

(1) *DATABASE.*—Not later than 180 days after the date of the enactment of this subsection, the Administrator shall develop and shall thereafter maintain a database containing data and information regarding—

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

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

(2) *ANALYSIS.*—For each bundled contract that is to be re-competed, the Administrator shall determine—

(A) the amount of savings and benefits realized, in comparison with the savings and benefits anticipated by the analysis required under subsection (d) prior to the contract award; 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.

(3) *ANNUAL REPORT ON CONTRACT BUNDLING.*—

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

tion of any such industry that is composed of small business concerns.

(h) BUNDLING ACCOUNTABILITY MEASURES.—

(1) TEAMING REQUIREMENTS.—Each Federal agency shall include in each solicitation for any multiple award contract above the dollar threshold a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 270 days after the date of enactment of this subparagraph, the Federal Acquisition Regulatory Council, established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 1302(a)), shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) establish a Government-wide policy regarding contract bundling;

(ii) establish a Government-wide policy on the solicitation of contractor teams and joint ventures; and

(iii) require that the policies established under clauses (i) and (ii) be published on the website of each Federal agency.

(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits the report required under section 15(h), the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

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