

CONTRACTING DATA AND BUNDLING ACCOUNTABILITY
ACT OF 2014

APRIL 9, 2014.—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. 4094]

The Committee on Small Business, to whom was referred the bill
(H.R. 4094) to direct the Administrator of the Small Business Ad-
ministration to develop and implement a plan to improve the qual-
ity of data reported on bundled and consolidated contracts, and for
other purposes, having considered the same, report favorably there-
on 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 “Contracting Data and Bundling Accountability Act of 2014”.

SEC. 2. PLAN FOR IMPROVING DATA ON BUNDLED AND CONSOLIDATED CONTRACTS.

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

“(s) DATA QUALITY IMPROVEMENT PLAN.—

“(1) IN GENERAL.—Not later than the first day of fiscal year 2016, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator of the Office of Federal Procurement Policy, and the Administrator of the General Services Administration shall develop a plan to improve the quality of data reported on bundled and consolidated contracts in the Federal procurement data system.

“(2) PLAN REQUIREMENTS.—The plan shall—

“(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, the Directors of the Offices of Small and Disadvantaged Business Utilization, the Small Business Procurement Advisory Council, the Administrator of the Office of Federal Procurement Policy, the Administrator of the General Services Administration, the senior procurement executives, and Chief Acquisition Officers in implementing the plan described in paragraph (1) and contributing to the annual report required by subsection (p)(4);

“(B) make necessary changes to policies and procedures on proper identification and mitigation of contract bundling and consolidation, and to training procedures of relevant personnel on proper identification and mitigation of contract bundling and consolidation;

“(C) establish consequences for failure to properly identify contracts as bundled or consolidated;

“(D) establish requirements for periodic and statistically valid data verification and validation; and

“(E) assign clear data verification responsibilities.

“(3) COMMITTEE BRIEFING.—Once finalized and by not later than 90 days prior to implementation, the plan described in this subsection shall be presented to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.

“(4) IMPLEMENTATION.—Not later than the first day of fiscal year 2017, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

“(5) CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

“(6) GAO STUDY AND REPORT.—

“(A) STUDY.—Not later than the first day of fiscal year 2018, the Comptroller General of the United States shall initiate a study on the effectiveness of the plan described in this subsection that shall assess whether contracts were accurately labeled as bundled or consolidated.

“(B) CONTRACTS EVALUATED.—For the purposes of conducting the study described in subparagraph (A), the Comptroller General of the United States—

“(i) shall evaluate, for work in each of sectors 23, 33, 54, and 56 (as defined by the North American Industry Classification System), not fewer than 100 contracts in each sector;

“(ii) shall evaluate only those contracts—

“(I) awarded by an agency listed in section 901(b) of title 31, United States Code; and

“(II) that have a Base and Exercised Options Value, an Action Obligation, or a Base and All Options Value; and

“(iii) shall not evaluate contracts that have used any set aside authority.

“(C) REPORT.—Not later than 12 months after initiating the study required by subparagraph (A), the Comptroller General of the United States shall report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the results from such study and, if warranted, any recommenda-

tions on how to improve the quality of data reported on bundled and consolidated contracts.

“(7) DEFINITIONS.—In this subsection the following definitions shall apply:

“(A) CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.—The terms ‘Chief Acquisition Officer’ and ‘senior procurement executive’ have the meanings given such terms in section 44 of this Act.

“(B) FEDERAL PROCUREMENT DATA SYSTEM DEFINITIONS.—The terms ‘Base and Exercised Options Value’, ‘Action Obligation’, ‘Base and All Options Value’, and ‘set aside authority’ have the meanings given such terms by the Administrator for Federal Procurement Policy in the Federal procurement data system on October 1, 2013, or subsequent equivalent terms.”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4094, the “Contracting Data and Bundling Accountability Act of 2014,” is to improve the quality of data on contract bundling and consolidation currently reported pursuant to the Small Business Act (the Act).¹ The Act defines contract bundling 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.”² In contrast, it defines a consolidated contract as one that satisfies “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”³ of the new contract. The safeguards Congress has enacted to protect small business concerns against unjustified contract bundling and consolidation are triggered only if a contract is properly identified as bundled or consolidated. However, the inability of federal agencies to properly identify contracts as bundled or consolidated, let alone justify or mitigate the consolidation and bundling, is obvious from the data currently reported to Congress and through publicly available data sources.

H.R. 4094 employs a three step process to improve the quality of data available on contract bundling and consolidation. First, it directs the Administrator of the Small Business Administration (SBA) to work with other parties to develop a data quality improvement plan. Second, it provides the affected agencies one year to implement the plan. Third, it requires the Government Accountability Office (GAO) to study the effectiveness of the data quality improvement plan, and report to Congress on ways to further improve the quality of data reported on bundled and consolidated contracts. Better data quality should lead to improved identification of unjustified contract bundling or consolidation, which in turn should deter such procurement practices. Furthermore, in those situations in which bundling and consolidation are justified, the higher quality data will enable procurement officials to mitigate adverse ef-

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, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657s.

² 15 U.S.C. § 632(o)(2). A contract may be unsuitable for award to small businesses due to the diversity, size, or specialized nature of the elements of the performance specified; the value of the contract, places of performance, or a combination of these factors. *Id.*

³ 15 U.S.C. § 657q(a)(2). In the 112th Congress, H.R. 4081 attempted to reconcile these provisions and improve the definition of bundling. The key distinction between contract bundling and contract consolidation is that consolidation may occur without regard to whether the contract is suitable for award to a small business. Therefore, a contract may be consolidated but not bundled, but all bundled contracts are consolidated.

fects on small businesses through subcontract participation or the issuance of alternative contracts. H.R. 4094 will ensure that bundled and consolidated contracts that are justified are properly mitigated to ensure that opportunities for small business participation are maintained at the subcontract level or through the use of alternative contracts.

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 procurement officials to express concerns about contracting strategies which led to bundled contracts. This concern is rooted in the belief that contract bundling and consolidation undermine the goal of Section 15(a) of the Act to ensure 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,” and of “maintaining or mobilizing the Nation’s full productive capacity.”⁴

Indeed, in 1997 Congress determined that contract bundling jeopardized the aims of the Act, and enacted legislation requiring that agencies “avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.”⁵ To prevent such bundling, the 1997 legislation established a process for assessing whether bundling was justified, and, if so, how it should be mitigated.⁶ In 2010, Congress established a similar process for contract consolidation.⁷ Unfortunately, seventeen years after the first bundling legislation was passed, Committee hearings and recent GAO reports indicate that the prohibitions against unjustified and unmitigated contract bundling and consolidation are observed only in the breach.⁸

In part, the lack of adherence to statutory requirements may be attributed to the failure to properly identify bundled and consolidated contracts. Whether the contract is bundled or consolidated, agencies will not examine justifications and benefits, nor consider mitigation strategies as required by law, unless the contract is properly identified as bundled or consolidated.⁹ Without this simple act of recognition, none of the other carefully crafted protections for small business are worth the paper upon which they are written. Therefore, while recognizing that significant problems remain in the processes by which SBA and small business concerns may challenge contracts identified as bundled or consolidated, this legisla-

⁴ 15 U.S.C. § 644(a).

⁵ Small Business Reauthorization Act of 1997, Pub. L. No. 105–135, § 411, 111 Stat. 2592, 2617 (1997) (codified at 15 U.S.C. § 631(j)).

⁶ *Id.* at § 413, 111 Stat. 2618 (codified at 15 U.S.C. § 644(e)).

⁷ The Small Business Jobs Act of 2010 (Jobs Act), Pub. L. No. 111–240 Title I, Part III § 1313, 124 Stat. 2504, 2538 (2010).

⁸ *Bungling Bundling: Hearing Before the Subcomm. on Contracting and Workforce of the House Comm. On Small Business*, 113th Cong. 113–041 (2013); GAO, Updated Guidance and Reporting Needed for Consolidated Contracts (2013) (GAO–14–36).

⁹ The justification and mitigation requirements will be further discussed in Section VII of this report, but may be found in §§ 15(a) and 44 of the Act.

tion focuses on ensuring that contracts are first identified as bundled or consolidated, thereby triggering the protections in the Act.

The data available on the occurrence of contract bundling is scant and severely compromised. While all contracts that are bundled or consolidated are supposed to be tracked as such by the SBA and the Federal Procurement Data System (FPDS), these sources often conflict and neither is comprehensive. As the Committee's oversight has documented, the occurrence of bundling and consolidation is seriously underreported.¹⁰ As discussed in Section VII of this report, tens of billions of dollars in contracts are not being reported as bundled and consolidated. For example, the Subcommittee on Contracting and Workforce raised the issue of why strategic sourcing vehicles—contracts attempting to leverage the government's buying power by expanding the scope of contracts while limiting the number of vendors—are not being identified as bundled or consolidated.¹¹

Potential issues with the poor quality of data on contract bundling and consolidation may be caused by gaps or loopholes in the way in which that data is collected. The responsibility for identifying contracts as bundled or consolidated rests with the agency conducting the procurement, with SBA backstopping agency efforts. SBA has 58 Procurement Center Representatives specifically tasked with reviewing contracts to determine if they are suitable for award to small business, if they contain bundling or consolidation, and whether the bundling or consolidation is justified and mitigated.¹² However, with over 20 million procurement actions occurring each year, SBA is unable to catch contracts that the agency fails to identify.¹³ Since identifying contracts as bundled or consolidated imposes upon the agency additional reporting requirements and can reduce the agency's grade on its annual SBA report card, agencies have little incentive to make that identification.¹⁴

H.R. 4094 addresses the problems with the data available for contract bundling and consolidation. First, it requires that SBA, working with the Small Business Procurement Advisory Committee, the Administrator of the Office of Federal Procurement Policy, and the Administrator of the General Service Administration, develop a plan to improve the quality of data reported on consolidated and bundled contracts. This plan must address the roles and responsibilities of all parties; make changes to underlying policies, regulations, and training; establish consequences for the failure to properly identify contracts; establish requirements for periodic and statistically defensible data verification and validation; and assign clear data verification responsibilities. The agencies have until fiscal year 2017 to develop and implement the plan, which is in keeping with the time frames provided to the Committee for changes to the underlying data systems. A year after the new plan in place, GAO will audit contracts pulled from industries susceptible to consolidation and bundling, in order to assess whether the identifica-

¹⁰ Committee Memorandum, "Bungling Bundling: How Contract Bundling and Consolidation Remain Challenges to Small Business Success" 4–5 (2013), available at http://smallbusiness.house.gov/uploadedfiles/10-10-2013_hearing_memo.doc.pdf.

¹¹ *Putting the Strategy in Sourcing: Hearing Before the Subcomm. on Contracting and Workforce of the House Comm. on Small Business*, 113th Cong. 113–023 at 19–20 (2013).

¹² 15 U.S.C. § 644(l).

¹³ See, e.g., FPDS.

¹⁴ SBA Procurement Scorecard Methodology (2012) available at http://www.sba.gov/sites/default/files/files/Scorecard_Grade_Calculation_Methodology_FY12_FINAL_2013-06-24.pdf.

tion of contracts has improved. GAO also will suggest additional steps for improvement.

As agencies currently face few consequences for failing to properly identify bundled and consolidated contracts, this legislation is a necessary prerequisite to implementing the protections already present in the Act. Improving the labeling of consolidated and bundled contracts will provide small businesses with tangible benefits. It will make it easier for small businesses to challenge these contracts, and to obtain subcontracts on contracts that are bundled or consolidated. Furthermore, improved data will give the Committee and Congress the information it needs to continue formulating sensible procurement reforms that limit unjustified bundling and consolidation.

IV. HEARINGS

In the 113th Congress, the Subcommittee on Contracting and Workforce held two hearings that examined agency compliance with the current laws on contract bundling and consolidation. The first, held on June 13, 2013, was titled “Putting the Strategy in Sourcing: Challenges and Opportunities for Small Business Contractors.” During the hearing, witnesses testified that federal efforts at strategic sourcing were encouraging the use of bundling and consolidation without identifying, justifying these contracts or mitigating their effects. On October 10, 2013, the Subcommittee held a hearing entitled, “Bungling Bundling: How Contract Bundling and Consolidation Remain Challenges to Small Business Success.” At this hearing, witnesses testified that contracting officers still do not recognize bundling and consolidation, and that there are no consequences for agencies that fail to comply with the current statutory requirements.

Furthermore, during the 112th Congress, issues related to contract bundling were addressed by the Committee 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 5, 2014 and ordered H.R. 4094 reported to the House by a voice vote at 2:30 pm. During the markup, one amendment was offered and adopted.

Amendment Number One filed by Ms. Chu (D-CA) requires the SBA to present the Committee with the data quality improvement plan required in H.R. 4094 prior to implementing the plan. The amendment passed by voice vote at 2:30 pm.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto.

AMENDMENT TO H.R. 4094
OFFERED BY MS. CHU OF CALIFORNIA

Page 3, insert after line 17, and redesignate provisions accordingly:

“(3) COMMITTEE BRIEFING.—Once finalized and by not later than 90 days prior to implementation, the plan described in this subsection shall be presented to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.”.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 4094

Section 1. Short title

This Section designates the bill as the “Contracting Data and Bundling Accountability Act of 2014.”

Section 2. Plan for improving data on bundled and consolidated contracts

There are currently four means to track bundling and consolidation of contracts. The first of these is § 15(p) of the Act which requires that SBA create and administer a database that tracks each bundled contract, and that this serve as the basis of an annual report to Congress.¹⁵ Second, DoD is required to identify and report on contracts that are consolidated.¹⁶ Third, FPDS is configured to report bundled and consolidated contracts pursuant to § 15(p) and § 44 of the Act, and 10 U.S.C. § 2382 note. Finally, SBA’s Procurement Center Representatives (PCRs) track bundled and consolidated contracts using SBA Standard Form 1970 (SF 1970).¹⁷ Unfortunately, none of these systems are able to accurately capture consolidation or bundling, because the contracts are not properly identified in the first place.

Regardless of which method is used to track bundling, once a contract is identified as bundled, SBA and the contracting agency have certain responsibilities to small businesses pursuant to the Act. In the case of a bundled contract exceeding a regulatorily-set threshold, the contracting agency is required to provide the SBA and the agency’s internal small business advocates with a statement explaining why the underlying requirements cannot be met without bundling the contract, and “why the agency has determined that the bundled contract [is] necessary and justified.”¹⁸ Once that justification is made, the head of the contracting activity (HCA)¹⁹ must determine that “the anticipated benefits of the proposed bundled contract justify its use” and mitigate the effect on

¹⁵ 15 U.S.C. § 644 (p).

¹⁶ National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108–136, Tit. VIII, § 801, 117 Stat. 1392, 1540 (2003), codified at 10 U.S.C. § 2382 note.

¹⁷ SBA, S.O.P. 60–02–7 at 47 (2004); *see also* GAO, Improvements Needed to Help Ensure Reliability of SBA’s Performance Data on PCRS (2011) (GAO–11–549R).

¹⁸ 15 U.S.C. § 644(a). The current substantial bundling thresholds are \$8 million for the Department of Defense (DoD), \$6 million for the National Aeronautics and Space Administration (NASA), the General Services Administration (GSA) or the Department of Energy (DOE), or \$2.5 million for any other agency. 48 C.F.R. § 7.105. The criteria for a justifying the decision to bundle may include: (1) measurable cost savings (exclusive of administrative and personnel costs); (2) quality improvements; (3) reduction in acquisition cycle times; (4) better terms and conditions; or (5) other benefits. 15 U.S.C. § 644(a).

¹⁹ The HCA is usually the head of a regional office, so an agency will have multiple HCAs.

small businesses, usually through increased subcontracting opportunities.²⁰

Similarly, whether a contract is identified as consolidated using an agency process, SBA process, or DoD specific process, once the identification of a consolidated requirement occurs, specific agency-level actions are triggered. Before an agency can issue a consolidated contract for more than \$2 million, the Chief Acquisition Officer (CAO) or Senior Procurement Executive (SPE) must certify that the agency has conducted market research; identify “alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;” determine, in writing, that the consolidation is “necessary and justified;” identify any negative effects on small businesses due to the acquisition strategy and ensure “that steps will be taken to include small business concerns in the acquisition strategy.”²¹ In contrast to the bundling requirements, this requires that a more senior agency official make the certification, and applies to contracts above \$2 million—smaller contracts than those covered by bundling rules.²² While the agency is not required to provide this document to SBA, the agency must coordinate it with their internal small business advocates.²³

The aforementioned protections are triggered only once consolidation or bundling is identified. Misidentification or failure to identify contracts as bundled or consolidated thereby undermines protections for small business. This identification problem also makes the reporting required by Congress a Sisyphean task.

The SBA is required to report annually to the Committee on the bundling activity of the preceding year.²⁴ This report is generated using data in FPDS, using a database SBA is required to maintain to track the results of bundled contracts, and using the SF 1970s generated by the PCRs. Despite these three sources of data, the data reported to the Committee is seriously flawed. For example, the SBA’s FY 2011 and FY 2012 Bundling Report was only filed in February of this year.²⁵ However, the data in the report for that period varied significantly from the FPDS bundling and consolidation data, with SBA in each case underreporting bundling.²⁶ However, the FPDS data also appears unreliable. For example, contracts challenged as bundled or consolidated at the GAO under a bid protest cannot be found in the reports.²⁷ Likewise, in FY 2012, FPDS states that only four agencies bundled contracts during FY 2012—DoD, Agency for International Development, the Peace Corps, and the Department of the Treasury—and that they only bundled 11 contracts, albeit contracts worth over \$2.2 billion²⁸ Finally, a review of the SF 1970s for this period identified over \$2

²⁰ 15 § 644(e)(3). If the SBA determines that a contract was bundled but not identified as such, or objects to justification or mitigation strategy, the SBA can delay the procurement while SBA and the agency negotiate, although the agency ultimately will make the decision regarding the award. *Id.* at § 644(a).

²¹ 15 U.S.C. § 657q(c)(1). The CAO and SPE are senior officials responsible for the acquisition programs of an agency. 41 U.S.C. § 1702.

²² 15 U.S.C. § 657q(c)(1).

²³ *Id.* at § 644(k).

²⁴ *Id.* at § 644 (p).

²⁵ SBA, Report to Congress: Contract Bundling for Fiscal Years 2011 and 2012 (2014).

²⁶ Email from SBA to Committee Staff, September 30, 2013 (on file with the Committee).

²⁷ See, e.g., CYIOS, Inc., B-402728.3 (2012) (bundling not unjustified since SBA did not challenge bundle). Even though the contract was bundled, no such contract is found as bundled or consolidated in FPDS.

²⁸ FPDS Report, October 1, 2013 (on file with the Committee).

billion in contracts the Committee considers bundled. None of these procurements are listed in FPDS, including a \$1.2 billion bundle at the Department of Veterans Affairs.²⁹

Similarly, DoD is required to report on contracts that are consolidated.³⁰ These reports have not been filed. However, drawing on data from FPDS, DoD reported 144 consolidated contracts for FY 2012, worth \$265.9 billion—more than half the total dollars spent by the entire federal government through contracts that year.³¹ Further research showed that \$240 billion of those dollars should have been only entered as \$48 billion.³² When the \$240 billion error is subtracted from \$265 billion, and only \$48 billion reentered, this reduces the total to \$73.9 billion.³³ However, this number is not reliable either, as GAO determined that contracts were consolidated but not identified as such.³⁴

Finally, while there is no Congressional reporting requirement, contracts consolidated pursuant to §44 of the Act are identified as such in FPDS. However, despite the fact that this provision became law nearly four years ago, agencies are not recording contracts as consolidated. This does not indicate that consolidated failed to occur outside of DoD. In FY 2012, draft RFPs were issued for ten civilian agency contracts worth a total of \$39.2 billion, it seems incredible that none of the ten agencies responsible for those contracts reported any bundled or consolidated contracts for that period.³⁵ Indeed, some of these contracts, such as GSA's \$12 billion integrated professional services contract, called OASIS, have been discussed as bundles and consolidations in prior Subcommittee hearings, although no bundling or consolidation justification has ever been provided.³⁶ Likewise, strategic sourcing vehicles are noticeable absent from any report or data source. Given that strategic sourcing involves combining the requirements of numerous federal agencies into one contract with a limited number of vendors, these contracts meet the definition of a consolidated contract, and possibly a bundled contract. When questioned regarding the lack of data on consolidation, agencies stated that the lack of regulatory guidance excused their failure to report these vehicles.³⁷

Until the data on bundling and consolidation are improved, small businesses will have little protection against these procurement practices. To improve the data collection and reporting of bundled

²⁹The Committee staff requested copies of SBA's Form 1970s on September 16, 2013, and again on September 17, 30, and October 1, 2013, for FY 2011 and 2012. Unfortunately, SBA was not able to provide all of the requested documents, and the documents provided were often incomplete, used the terms bundling, breakout and partial set-aside interchangeably, and bore no relationship to the data in FPDS. While it is possible that SBA intervened and stopped this bundle, it is impossible to know. More disturbing are GAO's findings that SBA failed to review the majority of bundled contracts, and that information on the Form 1970s and otherwise maintained by SBA was unreliable. GAO, *Improvements Needed to Help Ensure Reliability of SBA's Performance Data on PCRS 2 (2011)* (GAO-11-549R).

³⁰*Supra*, note 16.

³¹FPDS Report, October 1, 2013 (on file with the Committee).

³²*Id.*

³³*Id.*

³⁴GAO, *Updated Guidance and Reporting Needed for Consolidated Contracts 22-24* (2013) (GAO-14-36).

³⁵Deltek, *Top Ten Civilian Opportunities for FY 2013* (2012) (on file with the Committee).

³⁶Committee Memorandum, "Putting the Strategy in Sourcing: Challenge and Opportunities for Small Business Contractors" (June 10, 2013) *available at* http://smallbusiness.house.gov/uploadedfiles/6_13_2013_hearing_memo.pdf.

³⁷GAO, *Updated Guidance and Reporting Needed for Consolidated Contracts 13* (2013) (GAO-14-36).

and consolidated contracts, the bill adds a new subsection 15(s) to the Act in order to ameliorate this problem.

Subsection (s)—Data quality improvement plan

Paragraph (1) of the new subsection 15(s) requires that the Administrator, in consultation with the Small Business Procurement Advisory Council (SBPAC),³⁸ the Administrator of the Office of Federal Procurement Policy (OFPP), and the Administrator of the General Services Administration (GSA), develop a plan to improve the quality of data reported on bundled and consolidated contracts in the federal procurement data system no later than the first day of Fiscal Year 2016.

Paragraph (2) of the new subsection 15(s) provides five mandatory elements for the data quality improvement plan. Each element is discussed in detail in a subparagraph.

Paragraph (2)(A) requires that the plan describe roles and responsibilities for the SBA Administrator, the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU), the SBPAC, the OFPP Administrator, the GSA Administrator, SPEs, and the CAOs implementing this plan. Each of these parties plays a critical role in ensuring that improvement in collected and reported data will occur.

As the agency tasked with reporting requirements under Section 15(p) of the Act, the SBA must play a key role in this process. Similarly, the OSDBUs are required to “identify proposed solicitations that involve significant bundling of contract requirements,”³⁹ and thereby play a key role. The SBPAC is statutorily required to monitor compliance by the OSDBUs, and to “(4) to identify best practices for maximizing small business utilization in Federal contracting that may be implemented by Federal agencies having procurement powers,”⁴⁰ so consequently are in a position to assist with the implementation of the plan. The bill also includes OFPP because it has responsibility for all government-wide acquisition policy, for ensuring compliance with federal procurement regulations, for training of the federal acquisition workforce, and for ensuring that FPDS adequately collects, develops, and disseminates procurement data.⁴¹ Likewise, the GSA Administrator has the day-to-day responsibility for FPDS, including its budget, so is in the best position to guarantee that the system collects the correct data.⁴² Finally, as the highest-ranking procurement officials within each agency, the CAO and SPE are responsible for all contracting activity within each agency, including the contracting officers, contract reporting systems, and ensuring that all acquisition decisions are “consistent with all applicable laws.”⁴³ Therefore, the Com-

³⁸The Small Business Procurement Advisory Council is an interagency committee comprised of the Directors of the Offices of Small and Disadvantaged Business Utilization, as defined in Section 15(k) of the Act (15 U.S.C. § 644(k)), and is chaired by the SBA. Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, Tit. VII, § 7104, 108 Stat. 3243, 3369 (1994) (FASA).

³⁹15 U.S.C. § 644(k)(5). Unfortunately, despite clear statutory direction, many OSDBU do not believe that they play a significant role in the review of contracts for bundling or consolidation. GAO, *Small Business Contract: Action Needed by Those Whose Advocates Do Not Report to Agency Heads and Required* 17 (2011) (GAO-11-418).

⁴⁰FASA at § 7104, 108 Stat. 3369, as amended by the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, Tit. XVI § 1692, 126 Stat. 1632, 2089 (2013).

⁴¹41 U.S.C. §§ 1121-22.

⁴²*Id.* at § 1122.

⁴³41 U.S.C. § 1702.

mittee determined that all of the aforementioned parties need to be engaged to improve the data quality on bundling and consolidation.

Paragraph (2)(B) requires that the data quality improvement plan address the reasons that the data quality is poor. First, it requires that changes be made to policies and procedures on the identification and mitigation on contract bundling and consolidation. Many agencies misunderstand the rules associated with bundling and consolidation.⁴⁴ Agencies questioned by the Committee claim that it is unnecessary to report contracts as bundled or consolidated if the bundling or consolidation is mitigated. Second, it requires that people involved with the identification and mitigation receive the necessary training to carry out their responsibilities. The educational component is key because the Subcommittee on Contracting and Workforce received testimony that contracting officers do not know how to identify bundling and consolidation.⁴⁵

Paragraph (2)(C) also addresses an issue raised by testimony before the Subcommittee on Contracting and Workforce—the lack of accountability.⁴⁶ Currently, there are no repercussions if a contracting official fails to identify a contract as bundled or consolidated. Therefore, subparagraph (C) requires that the data quality improvement plan include consequences for the failure to properly identify contracts as bundled or consolidated.

Paragraph (2)(D) requires that the responsible parties take affirmative actions to review the quality of the data, rather than simply relying upon that which is in FPDS. Specifically, the legislation requires that the data quality improvement plan include requirements for periodic and statistically acceptable data verification and validation. As DoD has already implemented a similar process for its data, which accounts for over seventy percent of the data in FPDS, the Committee believes that existing resources are available to complete this task.

Paragraph (2)(E) further addresses the procedures for data verification. Specifically, this subparagraph requires that the relevant parties assign clear data verification responsibilities as part of the data quality improvement plan.

Subsection (s)(3) is designed to increase the Committee's oversight of the data quality improvement plan. It requires that at least 90 days before implementing the plan, as described in Paragraph (4), the Administrator present the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate. Based on the deadlines in Paragraph (4), this briefing must occur no later than July 2, 2016. The Committee also finds that imposing mandatory obligations, such as deliverables to Congress, will provide SBA with the needed incentives to meet its statutory mandate.

Subsection (s)(4) establishes the timeline for implementing the data quality improvement plan. It requires that the data quality improvement plan be implemented no later than October 1, 2016. The Committee believes that providing SBA and the other entities named in subsection (s)(1) with more than a full year to develop

⁴⁴GAO, Updated Guidance and Reporting Needed for Consolidated Contracts 8 (2013) (GAO-14-36).

⁴⁵*Bungling Bundling: Hearing Before the Subcomm. on Contracting and Workforce of the House Comm. On Small Business*, 113th Cong. 113-041 (2013) (statement of Juanita Beauford, at 5).

⁴⁶*Id.* at 5, 6, 10. (statements of Juanita Beauford, Robert Burton, and Margot Dorfman).

and implement the plan is sufficient, given that the responsibility to collect and report this data has existed for up to 17 years. Furthermore, DoD is currently undertaking a similar effort with all of its FPDS data, which should greatly simplify the process.

Subsection (s)(5) requires that the Administrator, as part of the annual reporting process required by § 15(p) of the Act, certify that the data is accurate and complete. This certification will require that the Administrator remain vigilant in policing the quality of the data submitted. Unfortunately, the certification is necessary given the poor state of the data currently provided to Congress.

Subsection (s)(6) establishes a detailed framework for a GAO study and report on the effectiveness of the data quality improvement plan. The Committee believes that data quality must be continually monitored to remain useful, and this study will determine whether the parties tasked by this legislation were successful in improving the quality of the data.

Paragraph (6)(A) establishes the timeline and subject matter of the study. Specifically, it requires that GAO begin the study no later than October 1, 2017. This ensures that the data quality improvement plan will have been operational for at least one year when GAO begins the study. Further, GAO must evaluate the effectiveness of the data quality improvement plan and whether contracts entered into after implementation of the data quality improvement plan are correctly labeled as bundled or consolidated.

Paragraph (6)(B) specifies which contracts GAO shall evaluate as part of its study. The Committee determined that it was necessary to specify the types of contracts to be examined in order to obtain the most relevant data. For example, if GAO were to study fuel contracts, which have historically been awarded to large businesses, the results would not be particularly useful. Likewise, if GAO were to study contracts set aside for small businesses, by definition the contracts could not be considered bundled. Therefore, the analysis would not produce any useful insights.

Clause (i) specifies that the study shall consist of the analysis of at least 100 contracts in each of four broad industry sectors. Those sectors are specified by North American Industry Classification System (NAICS) code, and are Construction (NAICS 23), Manufacturing (NAICS 33), Professional, Scientific, and Technical Services (NAICS 54) and Administrative and Support and Waste Management and Remediation Services (NAICS 56). These sectors were chosen for a number of reasons. First, in FY 2013, they accounted for 75 percent of the dollars spent by the federal government, but only 19 percent of the contracts awarded.⁴⁷ This indicates that the contracts are larger and more susceptible to bundling and consolidation. Second, small businesses are active in each of these sectors. During FY 2013, small businesses in NAICS 23 received 68 percent of the awards and 45 percent of the dollars.⁴⁸ During the same time period small business participation in NAICS 33 accounted for 27 percent of the awards and 10 percent of the dollars.⁴⁹ Similarly, in NAICS 54, small businesses received 45 percent of the awards

⁴⁷FPDS Report generated by the Committee staff on April 1, 2014 (on file with the Committee).

⁴⁸*Id.* Given the types and kinds of construction projects available, if not for the proliferation of bundling and consolidation, small businesses could reasonably expect to win a far greater percentage of both the dollars and awards in this sector.

⁴⁹*Id.*

and 24 percent of the dollars; and in NAICS 56, they received 57 percent of the awards and 24 percent of the dollars.⁵⁰ Given the Committee's longstanding interest in bundling, the Committee determined that these sectors would provide the best insight into data collection improvements arising out of compliance with H.R. 4094.

Even with the limitations in clause (i), GAO would need to start its study with over 80,000 contracts to consider. The Committee recognizes the need to further circumscribe the set of contracts GAO would review. First, in clause (ii)(I), the bill limits the GAO study to contracts awarded by the 24 largest agencies. While all agencies play a role in creating opportunities for small business competition, the activities of the National Capitol Planning Commission, which awarded only four contracts valued at less than \$35,000 in FY 2013, is not likely to be probative.⁵¹

Second, per subclause (II), GAO is required to review only those contracts exceeding \$10 million. While contracts below \$10 million may be consolidated or bundled, their size alone should not preclude small business participation. This will greatly limit the number of contracts to be reviewed. For example, during October 2012, there were approximately 19,245 contracts awarded in NAICS 54.⁵² However, only 272 of these actions exceed \$10 million. If extrapolated, this will mean that only one percent of the contracts in the designated industry categories would be considered for the report.

A final limitation is imposed on the scope of the report in subclause (III) by excluding contracts set aside for small businesses or any subcategory thereof.⁵³ Since contracts set aside for small businesses are not, by definition, bundled contracts, including them in the sample for the study is unlikely to be probative of improvements in the database of *bundled* contracts.

Paragraph (7) of the new subsection 15(s) provides definitions for terms used in this section. Definitions are provided for the following terms: CAO, SPE, and specific types of contract actions enumerated in the FPDS.

The terms CAO and SPE are defined in subparagraph (A) as having the same definitions provided in Section 44 of the Act. That section cross references the definition set out in 41 U.S.C. § 1702.⁵⁴

The terms "Base and Exercised Options Value" (BEOV), "Action Obligation" (AO), and "Base and All Options Value" (BAOV) are used in the new 15(s)(5)(B)(II) have the meanings given these terms by the OFPP Administrator through FPDS on October 1, 2013, or equivalent definitions as the systems evolve. That means that BEOV refers to the money obligated under a contract for the

⁵⁰ *Id.*

⁵¹ FPDS Report, "Awards by Contractor Type" generated by the Committee staff on April 1, 2014.

⁵² FPDS Report generated by the Committee staff on April 1, 2014 (on file with the Committee).

⁵³ When there are two or more small businesses that can perform requirement at a fair and reasonable price, competition on that contract is restricted to small business concerns. 48 C.F.R. § 19.502. Sections 8(a), 8(m), 31, and 36 of the Act provide the ability to restrict competition based the concerns status as a socially and economically-disadvantaged small business, woman-owned small business, historically underutilized business zone (HUBzone) qualified small business, or service-disabled veteran-owned small business, respectively.

⁵⁴ As previously discussed, CAOs and SPEs are responsible for the acquisition programs of their respective agencies. Military departments and small agencies do not have CAOs, but instead have SPEs with the same responsibilities. Large agencies often have both a CAO and a SPE, with the SPE serving as the senior official responsible for procurement reporting to the CAO.

base period of performance and any exercised options, while the BAOV is the total amount that may be obligated over the life of the contract, including unexercised options. The AO means the amount obligated by an agency through a discrete action, such as the exercise of an option, modification, or change. An AO is an action that accrues toward the ceiling for a base year or option year.

VIII. UNFUNDED MANDATES

H.R. 4094 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.

IX. 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. While 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 does not believe that any additional appropriation will be required due to the enactment of H.R. 4094. H.R. 4094 does not direct new spending, but prioritizes how resources already allocated under the E-Government Fund, 44 U.S.C. § 3604, should be spent. Further, the Committee notes that DoD is already undertaking a data quality improvement plan for all FPDS data, including bundled and consolidated contracts. As approximately 70 percent of the records in FPDS are generated by DoD, this means that the majority of the effort should be directed towards reviewing a small portion of the data.

X. 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 contained in H.R. 4094 are incorporated into the descriptive portions of this report.

XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that 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.

XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4094 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.

XIII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 4094 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.

XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 4094 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.

XV. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII of the Rules of the House, no provision of H.R. 4094 establishes or reauthorizes a program of the federal government known to be duplicative of another Federal program, a program that was included in any report from the GAO pursuant to Section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

XVI. DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House, H.R. 4094 does not direct any rulemaking.

XVII. 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. 4094 includes a number of provisions designed to improve the quality of data captured and reported on contract bundling and consolidation, to improve agency compliance with the Small Business Act.

XVIII. 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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

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SEC. 15. (a) * * *

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(s) *DATA QUALITY IMPROVEMENT PLAN.*—

(1) *IN GENERAL.*—*Not later than the first day of fiscal year 2016, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator of the Office of Federal Procurement Policy, and the Administrator of the General Services Administration shall develop a plan to improve the quality of data re-*

ported on bundled and consolidated contracts in the Federal procurement data system.

(2) *PLAN REQUIREMENTS.—The plan shall—*

(A) *describe the roles and responsibilities of the Administrator of the Small Business Administration, the Directors of the Offices of Small and Disadvantaged Business Utilization, the Small Business Procurement Advisory Council, the Administrator of the Office of Federal Procurement Policy, the Administrator of the General Services Administration, the senior procurement executives, and Chief Acquisition Officers in implementing the plan described in paragraph (1) and contributing to the annual report required by subsection (p)(4);*

(B) *make necessary changes to policies and procedures on proper identification and mitigation of contract bundling and consolidation, and to training procedures of relevant personnel on proper identification and mitigation of contract bundling and consolidation;*

(C) *establish consequences for failure to properly identify contracts as bundled or consolidated;*

(D) *establish requirements for periodic and statistically valid data verification and validation; and*

(E) *assign clear data verification responsibilities.*

(3) *COMMITTEE BRIEFING.—Once finalized and by not later than 90 days prior to implementation, the plan described in this subsection shall be presented to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.*

(4) *IMPLEMENTATION.—Not later than the first day of fiscal year 2017, the Administrator of the Small Business Administration shall implement the plan described in this subsection.*

(5) *CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate certification of the accuracy and completeness of data reported on bundled and consolidated contracts.*

(6) *GAO STUDY AND REPORT.—*

(A) *STUDY.—Not later than the first day of fiscal year 2018, the Comptroller General of the United States shall initiate a study on the effectiveness of the plan described in this subsection that shall assess whether contracts were accurately labeled as bundled or consolidated.*

(B) *CONTRACTS EVALUATED.—For the purposes of conducting the study described in subparagraph (A), the Comptroller General of the United States—*

(i) *shall evaluate, for work in each of sectors 23, 33, 54, and 56 (as defined by the North American Industry Classification System), not fewer than 100 contracts in each sector;*

(ii) *shall evaluate only those contracts—*

(I) *awarded by an agency listed in section 901(b) of title 31, United States Code; and*

(II) that have a Base and Exercised Options Value, an Action Obligation, or a Base and All Options Value; and

(iii) shall not evaluate contracts that have used any set aside authority.

(C) *REPORT.*—Not later than 12 months after initiating the study required by subparagraph (A), the Comptroller General of the United States shall report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the results from such study and, if warranted, any recommendations on how to improve the quality of data reported on bundled and consolidated contracts.

(7) *DEFINITIONS.*—In this subsection the following definitions shall apply:

(A) *CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.*—The terms “Chief Acquisition Officer” and “senior procurement executive” have the meanings given such terms in section 44 of this Act.

(B) *FEDERAL PROCUREMENT DATA SYSTEM DEFINITIONS.*—The terms “Base and Exercised Options Value”, “Action Obligation”, “Base and All Options Value”, and “set aside authority” have the meanings given such terms by the Administrator for Federal Procurement Policy in the Federal procurement data system on October 1, 2013, or subsequent equivalent terms.

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