

S.2989
Small Business Contracting Revitalization Act of 2010 (Introduced in Senate)

S 2989 IS

111th CONGRESS
2d Session
S. 2989

To improve the Small Business Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 4, 2010

Ms. LANDRIEU (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To improve the Small Business Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Small Business Contracting Revitalization Act of 2010'.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.

TITLE I--CONTRACT BUNDLING

- Sec. 101. Leadership and oversight.
- Sec. 102. Consolidation of contract requirements.
- Sec. 103. Small business teams pilot program.

TITLE II--SUBCONTRACTING INTEGRITY

- Sec. 201. GAO recommendations on subcontracting misrepresentations.
- Sec. 202. Small business subcontracting improvements.

TITLE III--ACQUISITION PROCESS

- Sec. 301. Reservation of prime contract awards for small businesses.
- Sec. 302. Micro-purchase guidelines.
- Sec. 303. Agency accountability.
- Sec. 304. Payment of subcontractors.
- Sec. 305. Repeal of Small Business Competitiveness Demonstration Program.

TITLE IV--SMALL BUSINESS SIZE AND STATUS INTEGRITY

- Sec. 401. Policy and presumptions.
- Sec. 402. Annual certification.
- Sec. 403. Training for contracting and enforcement personnel.
- Sec. 404. Updated size standards.
- Sec. 405. Study and report on the mentor-protége program.

SEC. 3. DEFINITIONS.

In this Act--

- (1) the terms `Administration' and `Administrator' mean the Small Business Administration and the Administrator thereof, respectively; and
- (2) the term `small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

TITLE I--CONTRACT BUNDLING

SEC. 101. LEADERSHIP AND OVERSIGHT.

- (a) In General- Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following:
 - `(q) Bundling Accountability Measures-
 - `(1) TEAMING REQUIREMENTS- Each Federal agency shall include in each solicitation for any contract award above the substantial bundling threshold of the Federal agency a provision soliciting bids by teams and joint ventures of small business concerns.
 - `(2) AGENCY POLICIES ON REDUCTION OF CONTRACT BUNDLING- The head of each Federal agency shall--

` (A) not later than 180 days after the date of enactment of this subsection, publish on the website of the Federal agency the policy of the Federal agency regarding contracting bundling and consolidation, including regarding the solicitation of teaming and joint ventures under paragraph (1); and
` (B) not later than 30 days after the date on which the head of the Federal agency submits data certifications to the Administrator for Federal Procurement Policy, 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.

` (3) REPORTING- Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Director of Small and Disadvantaged Business Utilization for each Federal agency shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall--

` (A) identify each area for which the Federal agency has assigned a procurement center representative or a commercial market representative;

` (B) explain why the Federal agency selected the areas identified under subparagraph (A); and

` (C) describe the activities performed by procurement center representatives and commercial market representatives.'.

(b) Technical Correction- Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by striking ` Administrator of the Office of Federal Procurement Policy' each place it appears and inserting ` Administrator for Federal Procurement Policy'.

(c) Report-

(1) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report regarding the procurement center representative program of the Administration.

(2) CONTENTS- The report submitted under paragraph (1) shall--

(A) address ways to improve the effectiveness of the procurement center representative program in helping small business concerns obtain Federal contracts;

(B) evaluate the effectiveness of procurement center representatives and commercial marketing representatives; and

(C) include recommendations, if any, on how to improve the procurement center representative program.

(d) Electronic Procurement Center Representative- Not later than 180 days after the date of enactment of this Act, the Administrator shall implement an electronic procurement center representative program.

SEC. 102. CONSOLIDATION OF CONTRACT REQUIREMENTS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended--

- (1) by redesignating section 44 as section 45; and
- (2) by inserting after section 43 the following:

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, are being, or will be provided to, or will be performed for or would typically be 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;

` (3) the term `Federal agency' does not include the Department of Defense or any agency of the Department of Defense;

` (4) the term `multiple award contract' means--

` (A) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

` (B) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation; and

` (5) 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- 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; and
- ` (C) determines that the consolidation of contract requirements is necessary and justified.

` (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 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.'

SEC. 103. SMALL BUSINESS TEAMS PILOT PROGRAM.

(a) Definitions- In this section--

(1) the term `Center' means the Center for Small Business Teaming established under subsection (b); and

(2) the term `eligible organization' means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Center) relating to--

- (A) customer relations and outreach;
- (B) submitting bids and proposals;
- (C) team relations and outreach; and
- (D) performance measurement and quality assurance.

(b) Establishment- The Administrator shall establish a Center for Small Business Teaming within the Administration to carry out a pilot program for teaming and joint ventures involving small business concerns.

(c) Grants- The Center may make grants to eligible organizations to assemble teams of small business concerns to compete for larger procurement contracts.

(d) Contracting Opportunities-

(1) IN GENERAL- The Center shall work with eligible organizations receiving a grant under this section to identify appropriate contracting opportunities for teams or joint ventures of small business concerns.

(2) RESTRICTED COMPETITION- A contracting officer of a Federal agency may restrict competition for any contract for the procurement of goods or services by the Federal agency to teams or joint ventures of small business concerns if determined appropriate by the contracting officer.

(e) Termination- The authorities under this section shall terminate 5 years after the date of enactment of this Act.

(f) Authorization of Appropriations- There are authorized to be appropriated for grants by the Center under subsection (c) \$5,000,000 for each of fiscal years 2010 through 2015.

TITLE II--SUBCONTRACTING INTEGRITY

SEC. 201. GAO RECOMMENDATIONS ON SUBCONTRACTING MISREPRESENTATIONS.

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

^ (o) Prevention of Misrepresentations in Subcontracting; Implementation of Recommendations of Comptroller General-

^ (1) STATEMENT OF POLICY- It is the policy of Congress that the recommendations of the Comptroller General of the United States in Report No. 05-459, concerning oversight improvements necessary to ensure maximum practicable participation by small business concerns in subcontracting, shall be implemented Government-wide, to the maximum extent possible.

^ (2) CONTRACTOR COMPLIANCE- Compliance of Federal prime contractors with subcontracting plans relating to small business concerns shall be evaluated as a percentage of obligated prime contract dollars and as a percentage of subcontracts awarded.

^ (3) ISSUANCE OF AGENCY POLICIES- Not later than 180 days after the date of enactment of this subsection, the head of each Federal agency shall issue a policy on subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.'.

SEC. 202. SMALL BUSINESS SUBCONTRACTING IMPROVEMENTS.

Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended--

- (1) in subparagraph (E), by striking `and' at the end;
- (2) in subparagraph (F), by striking the period at the end and inserting `; and'; and
- (3) by adding at the end, the following:
 - `(G) a certification that the offeror or bidder will acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal, unless the small business concerns are no longer in business or can no longer meet the quality, quantity, or delivery date.'

TITLE III--ACQUISITION PROCESS

SEC. 301. RESERVATION OF PRIME CONTRACT AWARDS FOR SMALL BUSINESSES.

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

- `(r) Government-Wide Acquisition Contracts- Not later than 180 days after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator shall jointly, by regulation, establish criteria for Federal agencies for--
 - `(1) setting aside part or parts of a multiple award contract (as defined in section 44), Federal supply schedule contracts, and other Government-wide acquisition contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);
 - `(2) setting aside orders placed against multiple award contracts, Federal supply schedule contracts, and other Government-wide acquisition contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and
 - `(3) reserving 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).'

SEC. 302. MICRO-PURCHASE GUIDELINES.

Not later than 1 year after the date of enactment of this Act, the Controller of the Office of Federal Financial Management shall issue guidelines regarding the analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small business concerns in purchases in an amount not in excess of the micro-purchase threshold, as defined in section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) (in this section referred to as `micro-purchases'), consistent with the national policy on small business participation in Federal procurements set forth in sections 2(a) and 15(g) of the Small Business Act (15 U.S.C. 631(a) and 644(g)), and dissemination of best practices for participation of small business concerns in micro-purchases.

SEC. 303. AGENCY ACCOUNTABILITY.

Section 15(g)(2) of the Small Business Act (15 U.S.C. 644(g)(2)) is amended--

- (1) by inserting `(A)' after `(2)';
- (2) by striking `Goals established' and inserting the following:
 - (B) Goals established';
 - (3) by striking `Whenever' and inserting the following:
 - (C) Whenever';
 - (4) by striking `For the purpose of' and inserting the following:
 - (D) For the purpose of';
 - (5) by striking `The head of each Federal agency, in attempting to attain such participation' and inserting the following:
 - (E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D)';
 - (6) in subparagraph (E), as so designated--
 - (A) by striking `(A) contracts' and inserting `(i) contracts';
 - and
 - (B) by striking `(B) contracts' and inserting `(ii) contracts';
 - and
 - (7) by adding at the end the following:
 - (F)(i) Each procurement employee or program manager described in clause (ii)--
 - (I) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals; and
 - (II) shall have as a significant factor in the annual performance evaluation of the procurement employee or program manager, where appropriate, the success of that procurement employee or program manager in small business utilization, in accordance with the goals established under this subsection.

` (ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.'

SEC. 304. PAYMENT OF SUBCONTRACTORS.

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

` (11) Payment of Subcontractors-

` (A) DEFINITION- In this paragraph, the term `covered contract' means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

` (B) NOTICE-

` (i) IN GENERAL- A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which--

` (I) the Federal agency has paid the prime contractor;
or

` (II) the prime contractor has submitted a request for payment to the Federal agency.

` (ii) CONTENTS- A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

` (iii) PUBLIC AVAILABILITY- The head of each Federal agency shall, after redacting information identifying any subcontractor, make publicly available any notice made under clause (i).

` (C) PERFORMANCE- A contracting officer for a covered contract shall consider the failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

` (D) CONTROL OF FUNDS- A contracting officer for a covered contract may restrict the authority of a prime contractor that has a history of untimely payment of subcontractors (as determined by the contracting officer) to make expenditures under or control payment of subcontractors for a covered contract.'

TITLE IV--SMALL BUSINESS SIZE AND STATUS INTEGRITY

SEC. 401. POLICY AND PRESUMPTIONS.

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

` (t) Presumption-

` (1) IN GENERAL- In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

` (2) DEEMED CERTIFICATIONS- The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

` (A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

` (B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

` (C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

` (3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL-

` (A) IN GENERAL- Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

` (B) CONTENT OF CERTIFICATIONS- A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of a director, officer, or counsel on the same page on which the certification is contained.

` (4) REGULATIONS- The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.'.

SEC. 402. ANNUAL CERTIFICATION.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by this Act, is amended by adding at the end the following:

` (u) Annual Certification-

` (1) IN GENERAL- Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the ORCA database of the Administration, or any successor thereto.

` (2) REGULATIONS- Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that--

` (A) no business concern continues to be certified as a small business concern on the ORCA database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

` (B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

` (3) DETERMINATION OF SIZE STATUS- The small business size or status of a business concern shall be determined at the time of the award of a Federal--

` (A) contract, except that, in the case of interagency multiple award contracts (as defined in section 44), small business size or status shall be determined annually, except for purposes of the award of each task or delivery order set aside or reserved for small business concerns;

` (B) subcontract;

` (C) grant;

` (D) cooperative agreement; or

` (E) cooperative research and development agreement.'.

SEC. 403. TRAINING FOR CONTRACTING AND ENFORCEMENT PERSONNEL.

(a) In General- Not later than 1 year after the date of enactment of this Act, the Federal Acquisition Institute, in consultation with the Administrator for Federal Procurement Policy, shall develop courses concerning proper classification of business concerns and small business size and status for

purposes of Federal contracts, subcontracts, grants, cooperative agreements, and cooperative research and development agreements.

(b) Policy on Prosecutions of Small Business Size and Status Fraud- Section 3 of the Small Business Act (15 U.S.C. 632), as amended by this Act, is amended by adding at the end the following:

^ (v) Policy on Prosecutions of Small Business Size and Status Fraud- Not later than 1 year after the date of enactment of this subsection, the head of each relevant Federal agency and the Inspector General of the Administration shall issue a Government-wide policy on prosecution of small business size and status fraud.'

SEC. 404. UPDATED SIZE STANDARDS.

Not later than 1 year after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall--

- (1) conduct a detailed review of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2));
- (2) make appropriate adjustments to size standards under that section to reflect market conditions; and
- (3) make publically available information regarding--
 - (A) the factors evaluated as part of the review conducted under paragraph (1); and
 - (B) the criteria used for any revised size standards promulgated under paragraph (2).

SEC. 405. STUDY AND REPORT ON THE MENTOR-PROTEGE PROGRAM.

(a) In General- The Comptroller General of the United States shall conduct a study of the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), and other relationships and strategic alliances pairing a larger business and a small business concern partner to gain access to Federal Government contracts, to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in Government contracting.

(b) Matters To Be Studied- The study conducted under this section shall include--

- (1) a review of a broad cross-section of industries; and
- (2) an evaluation of--
 - (A) how each Federal agency carrying out a program described in subsection (a) administers and monitors the program;
 - (B) whether there are systems in place to ensure that the mentor-protege relationship, or similar affiliation, promotes

real gain to the protege, and is not just a mechanism to enable participants that would not otherwise qualify under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to receive contracts under that section; and

(C) the degree to which protege businesses become able to compete for Federal contracts without the assistance of a mentor.

(c) Report to Congress- Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of the study conducted under this section.