

111TH CONGRESS
2^D SESSION

H. R. 4496

To ensure that small businesses have their fair share of Federal procurement opportunities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2010

Mr. GRAVES (for himself, Mr. BARTLETT, Mr. LUETKEMEYER, Mr. BUCHANAN, Mr. AKIN, and Mr. SCHOCK) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committees on Oversight and Government Reform and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure that small businesses have their fair share of Federal procurement opportunities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Small Busi-
5 ness Compete Act of 2010”.

1 **TITLE I—SMALL BUSINESS**
2 **GOALS**

3 **SEC. 101. SMALL BUSINESS GOAL.**

4 Section 15(g)(1) of the Small Business Act (15
5 U.S.C. 644(g)(1)) is amended by striking “23 percent”
6 and inserting “25 percent”.

7 **SEC. 102. AGENCY GOAL NEGOTIATION.**

8 (a) **NEGOTIATION.**—Section 15(g)(1) of the Small
9 Business Act (15 U.S.C. 644(g)(1)) is amended by strik-
10 ing “The President shall annually establish Government-
11 wide goals for procurement contracts” and inserting “The
12 President shall before the close of each fiscal year estab-
13 lish new Government-wide procurement goals for the fol-
14 lowing fiscal year for procurement contracts.”.

15 (b) **MINIMUM LEVEL.**—Section 15(g)(1) of the Small
16 Business Act (15 U.S.C. 644(g)(1)) is amended by strik-
17 ing “Notwithstanding the Government-wide goal, each
18 agency shall have an annual goal” and inserting “Each
19 agency shall have an annual goal, not lower than the Gov-
20 ernment-wide goal,”.

21 **SEC. 103. PROCEDURES AND METHODS FOR GOAL**
22 **ACHIEVEMENT.**

23 (a) **GOAL RESPONSIBILITY.**—Section 15(g)(2) of the
24 Small Business Act (15 U.S.C. 644(g)(2)) is amended by
25 adding the following after the first sentence: “The goals

1 established by the head of each agency shall be appor-
2 tioned within the agency to a contracting office or offices
3 (as that term is defined in section 2.101 of title 48, Code
4 of Federal Regulations on January 1, 2009) that reports
5 to a career appointee in the Senior Executive Service.”.

6 (b) SENIOR EXECUTIVE SERVICE.—

7 (1) PURPOSES.—Section 3131 of title 5, United
8 States Code, is amended by adding at the end the
9 following:

10 “(15) ensure that the Government achieves the
11 small business procurement goals set forth in section
12 15 of the Small Business Act (15 U.S.C. 644).”.

13 (2) TRAINING.—Section 3396(a) of title 5,
14 United States Code, is amended by adding at the
15 end the following: “The training provided to senior
16 executives shall include federal procurement policy,
17 including the procurement provisions of the Small
18 Business Act.”.

19 (3) LIMITATION ON SABBATICALS.—Section
20 3396(e)(2) of title 5, United States Code—

21 (A) by striking the “and” at the end semi-
22 colon at the end of subparagraph (B)(iii);

23 (B) by striking the period at the end of
24 subparagraph (C), and adding “; or”; and

25 (C) by adding at the end the following:

1 “(D) who oversees a contracting office that
2 did not meet its small business procurement
3 goals established annually in accordance with
4 the procedures of section 15(g)(2) of the Small
5 Business Act (15 U.S.C. 644(g)(2)).”.

6 (4) LIMITATION ON INCENTIVE AWARDS.—An
7 employee in the Senior Executive Service shall not
8 be eligible for any incentive award specified in sub-
9 chapter I, chapter 45 of title 5, United States Code,
10 if the contracting office which reports to that mem-
11 ber of the Senior Executive Service fails to meet the
12 procurement goals established annually in accord-
13 ance with the procedures of section 15(g)(2) of the
14 Small Business Act (15 U.S.C. 644(g)(2)). Any
15 member of the Senior Executive Service, whether ca-
16 reer or non-career, to whom that member of the
17 Senior Executive Service reports also shall not be el-
18 igible for any incentive award specified in subchapter
19 I, chapter 45 of title 5, United States Code.

20 **SEC. 104. REPORTING REQUIREMENTS.**

21 Section 15(h) of the Small Business Act (15 U.S.C.
22 644(h)) is amended by adding the following:

23 “(4) By November 1 of each year, the head of
24 each Federal agency shall submit to Congress a re-
25 port specifying the percentage of contracts awarded

1 by that agency for the immediate preceding fiscal
2 year that were awarded to small business concerns.
3 If the percentage is less than the goal established by
4 the head of the agency pursuant to this section, the
5 head of the agency shall, in the report, explain why
6 the agency did not reach the goal and what will be
7 done to ensure that the goal for the following fiscal
8 year will be achieved.”.

9 **TITLE II—CONTRACT BUNDLING**

10 **SEC. 201. DEFINITIONS OF BUNDLING OF CONTRACT RE-** 11 **QUIREMENTS.**

12 Section 3(o) of the Small Business Act (15 U.S.C.
13 632(o)) is amended to read as follows:

14 “(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-
15 QUIREMENTS AND RELATED TERMS.—For purposes of
16 this Act:

17 “(1) BUNDLED CONTRACT.—

18 “(A) IN GENERAL.—The term ‘bundled
19 contract’ means a contract or order that is en-
20 tered into to meet procurement requirements
21 that are consolidated in a bundling of contract
22 requirements, without regard to its designation
23 by the procuring agency or whether a study of
24 the effects of the solicitation on civilian or mili-
25 tary personnel has been made.

1 “(B) EXCEPTIONS.—The term does not in-
2 clude—

3 “(i) a contract or order with an aggre-
4 gate dollar value below the dollar threshold
5 specified in paragraph (4); or

6 “(ii) a contract or order that is en-
7 tered into to meet procurement require-
8 ments, all of which are exempted require-
9 ments under paragraph (5).

10 “(2) BUNDLING OF CONTRACT REQUIRE-
11 MENTS.—

12 “(A) IN GENERAL.—The term ‘bundling of
13 contract requirements’ means the use of any
14 bundling methodology to satisfy 2 or more pro-
15 curement requirements for new or existing
16 goods or services, including any construction
17 services, that is likely to be unsuitable for
18 award to a small business concern due to—

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

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

24 “(iii) the geographical dispersion of
25 the contract or order performance; or

1 “(iv) any combination of the factors
2 described in clauses (i), (ii), or (iii).

3 “(B) EXCEPTIONS.—The term does not in-
4 clude—

5 “(i) the use of a bundling method-
6 ology for an anticipated award with an ag-
7 gregate dollar value below the threshold
8 specified in paragraph (4); or

9 “(ii) the use of a bundling method-
10 ology to meet procurement requirements,
11 all of which are exempted under paragraph
12 (5).

13 “(3) BUNDLING METHODOLOGY.—The term
14 ‘bundling methodology’ means—

15 “(A) a solicitation to obtain offers for a
16 single contract or order, or a multiple award
17 contract or order;

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

22 “(C) the creation of any new procurement
23 requirements that permits a consolidation of
24 contract or order requirements.

1 “(4) DOLLAR THRESHOLD.—The term ‘dollar
2 threshold’ means—

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

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

6 “(5) EXEMPTED REQUIREMENTS.—The term
7 ‘exempted requirement’ means one or more of the
8 following:

9 “(A) A procurement requirement solely for
10 items that are not commercial items (as the
11 term ‘commercial item’ is defined in section
12 4(12) of the Office of Federal Procurement Pol-
13 icy Act (41 U.S.C. 403(12)) but this subpara-
14 graph shall not apply to any procurement re-
15 quirement for a contract for goods or services
16 provided by a business classified in sector 23 of
17 the North American Industrial Classification
18 System.

19 “(B) A procurement requirement with re-
20 spect to which a determination that it is unsuit-
21 able for award to a small business concern pre-
22 viously been made by the agency. However, the
23 Administrator shall have authority to review
24 and reverse such a determination for purposes
25 of this paragraph and, if the Administrator

1 does reverse that determination, the term ‘ex-
2 empted requirement’ shall not apply to that
3 procurement requirement.

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

8 **SEC. 202. JUSTIFICATION.**

9 (a) STATEMENT OF BUNDLED CONTRACT REQUIRE-
10 MENTS.—Section 15(a) of the Small Business Act (15
11 U.S.C. 644(a)) is amended—

12 (1) by striking “is in quantity or estimated dol-
13 lar value the magnitude of which renders small busi-
14 ness prime contract participation unlikely” and in-
15 serting “would now be combined with other require-
16 ments for goods and services”;

17 (2) by striking “(2) why delivery schedules”
18 and inserting “(2) the names, addresses and size of
19 the incumbent contract holders, if applicable; (3) a
20 description of the industries that might be interested
21 in bidding on the contract requirements; (4) the
22 number of small businesses listed in the industry
23 categories that could be excluded from future bid-
24 ding if the contract is combined or packaged, includ-
25 ing any small business bidders that had bid on pre-

1 vious procurement requirements that are included in
2 the bundling of contract requirements; (5) why deliv-
3 ery schedules”;

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

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

9 (5) by striking “(5) why the agency” and in-
10 serting “(8) why the agency”;

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

19 (7) by inserting after “prime contracting oppor-
20 tunities.” the following: “If no notification of the
21 procurement and accompanying statement is re-
22 ceived, but the Administrator determines that there
23 is cause to believe the contract combines require-
24 ments or a contract (single or multiple award) or
25 task or delivery order for construction services or in-

1 includes unjustified bundling, then the Administrator
2 can demand that such a statement of work goods or
3 services be completed by the procurement activity
4 and sent to the Procurement Center Representative
5 and the solicitation process postponed for at least 10
6 days but no more than 30 days to allow the Admin-
7 istrator to review the statement and make rec-
8 ommendations as described in this section before
9 procurement is continued.”.

10 (b) **SUBSTANTIAL MEASURABLE BENEFITS.**—Section
11 15(e) of the Small Business Act (15 U.S.C. 644(e)) is
12 amended by adding at the end of subparagraph (2)(C),
13 the following: “Cost savings shall not include any reduc-
14 tion in the in the use of military interdepartmental pur-
15 chase requests or any similar transfer funds among federal
16 agencies for the use of a contract issued by another federal
17 agency.”.

18 **SEC. 203. APPEALS.**

19 Section 15(a) of the Small Business Act (15 U.S.C.
20 644(a)) is amended—

21 (1) by striking “If a proposed procurement in-
22 cludes in its statement” and inserting “If a proposed
23 procurement would adversely affect one or more
24 small business concerns, including, but not limited
25 to, the potential loss of an existing contract, or if a

1 proposed procurement includes in its statement”;
2 and

3 (2) by inserting before “Whenever the Adminis-
4 trator and the contracting procurement agency fail
5 to agree,” the following: “If a small business con-
6 cern would be adversely affected, directly or indi-
7 rectly, by the procurement as proposed, and that
8 small business concern or a trade association of
9 which that small business concern is a member so
10 requests, the Administrator may, take action to fur-
11 ther the interests of the small business.”.

12 **SEC. 204. THIRD-PARTY REVIEW.**

13 Section 8(d) of the Contract Disputes Act of 1978
14 (41 U.S.C. 607(d)) is amended—

15 (1) by striking “(d) The Armed Services
16 Board” and inserting “(d)(1) The Armed Services
17 Board”; and

18 (2) by inserting at the end the following:

19 “(2) CONTRACT BUNDLING.—

20 “(A) IN GENERAL.—Whenever the head of a
21 contracting agency makes a decision in accordance
22 with section 15(a) of the Small Business Act con-
23 cerning the Administrator of the Small Business Ad-
24 ministration’s challenge to a bundling of contract re-
25 quirements, the Administrator, within ten days after

1 such decision may file a challenge with the appro-
2 priate agency board of contract appeals.

3 “(B) PROCEDURE.—The board shall provide
4 the Administrator and the head of the contracting
5 agency the opportunity to provide their views on the
6 disputed contract. No oral testimony or oral argu-
7 ment shall be permitted. The board shall render its
8 decision within thirty days after the appeal has been
9 filed. The decision of the board shall be final.”.

10 **TITLE III— SMALL BUSINESS** 11 **SUBCONTRACTING**

12 **SEC. 301. GOOD FAITH COMPLIANCE WITH SUBCON-** 13 **TRACTING PLANS.**

14 Section 8(d)(10) of the Small Business Act (15
15 U.S.C. 637(d)(10)) is amended by—

16 (1) by striking “and” at the end of subpara-
17 graph (B);

18 (2) by striking the period at the end of sub-
19 paragraph (C), and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(D) Not later than 180 days after enact-
22 ment of this Act, the Administrator shall, after
23 the opportunity for notice and comment, pro-
24 mulgate regulations governing the Administra-
25 tor’s review of subcontracting plans including

1 the standards for determining good faith com-
2 pliance with the subcontracting plans.”.

3 **SEC. 302. LIMITATIONS ON SUBCONTRACTING.**

4 (a) REGULATIONS FOR CONTRACT ADMINISTRA-
5 TION.—Section 15(o) of the Small Business Act (15
6 U.S.C. 644(o)) is amended by adding at the end the fol-
7 lowing:

8 “(4) Not later than 180 days after enactment
9 of this Act, the Administrator shall, after the oppor-
10 tunity for notice and comment, promulgate regula-
11 tions that specify the responsibilities that each agen-
12 cy and the Administration personnel will have in en-
13 forcing the restrictions set forth in paragraph (1).
14 Such regulations also shall specify reporting and rec-
15 ordkeeping requirements for contracts covered by
16 paragraph (1).”.

17 (b) CONTRACTOR PENALTIES.—Section 16 of the
18 Small Business Act (15 U.S.C. 645) is amended by adding
19 at the end the following:

20 “(g) A small business that violates the requirements
21 of section 15(o)(1) of the Small Business Act shall be sub-
22 ject to the penalties set forth in subsection (d).”.

23 **SEC. 303. CRIMINAL VIOLATIONS.**

24 Section 1001(a) of title 18, United States Code, is
25 amended—

1 (1) in paragraph (2) by striking the “or” at the
2 end;

3 (2) in paragraph (3) by adding “or” at the end;

4 (3) inserting after paragraph (3) the following:

5 “(4) makes in writing or electronically a false
6 statement concerning status as a small business con-
7 cern or compliance with the requirements of the
8 Small Business Act in an effort to obtain, retain, or
9 complete a federal government contract;”; and

10 (4) by adding at the end the following: “For
11 violation of paragraph (4) of this subsection, not-
12 withstanding section 3571(e), the fine under this
13 title shall be the total value of the contract or
14 \$1,000,000 whichever is greater.”.

○