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SMALL BUSINESS CONTRACTING REVITALIZATION ACT OF 2010

SEPTEMBER 29, 2010.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 2989]

On March 4, 2010, the Senate Committee on Small Business and Entrepreneurship unanimously reported the Small Business Contracting Revitalization Act of 2010 (S. 2989), a bill to provide for the updating of small business contracting statutes, and for other purposes. Having considered S. 2989, the Committee reports favorably thereon with a manager's amendment and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The Small Business Contracting Revitalization Act of 2010 (S. 2989) is a bill to update the contracting provisions pertaining to small business procurement. In addition to making significant improvements to the Small Business Administration's procurement programs, the bill also authorizes several new oversight and pilot program initiatives. This bipartisan bill was introduced as an original bill by Chair Mary L. Landrieu on February 4, 2010, with Ranking Member Olympia J. Snowe as an original cosponsor. During markup of the bill on March 4, 2010, the Committee adopted, by a unanimous voice vote, a substitute amendment offered by Senator Landrieu. The bill was subsequently adopted, as amended, by a unanimous voice vote.

The Small Business Contracting Revitalization Act of 2010 seeks to revitalize and renew small business procurement law to better assist the small business community, and to meet the changing needs of the 21st century entrepreneur. Since the beginning of the 111th Congress, the Committee has held a series of hearings and

meetings to analyze the Small Business Administration's (SBA) programs and services pertaining to federal contracting, including the SBA's prime, subcontracting, 8(a), women-owned, Historically Underutilized Business Zone (HUBZone), service-disabled veterans, and Small Disadvantaged Business programs, in anticipation of introducing new legislation that builds on the Agency's success of helping small businesses create jobs and drive America's economy. Stakeholders of these programs provided important insights and recommendations to the Committee. S. 2989 aims to address many of the recommendations in Federal contracting, but does not address the SBA's socioeconomic programs.

On September 22, 2009, the Committee held a roundtable titled "Small Business Contracting: Ensuring Opportunities for America's Small Business." The roundtable focused on the challenges that small business owners face when attempting to contract with the Federal government, including those faced by small businesses attempting to subcontract with large primes. The Committee took note that lack of privity, or legal relationship between the Federal government and subcontractors, is often cited as the primary reason why the government lacks the authority to protect subcontractors. Consequently, the General Services Administration's (GSA) Deputy Chief Acquisition Officer, David Drabkin, testified during the roundtable that the Federal government avoids becoming involved in the relationship between prime and subcontractors.

During the roundtable, the Committee also heard testimony stating that more communication between subcontractors and prime contractors may help protect subcontractors. The Committee believes that innovative ways to protect subcontractors are needed. As such, S. 2989 seeks to address this issue by establishing several new protections for subcontractors. Finally, the Committee also heard testimony about the negative impact that bundling has on the availability of contracting opportunities for small businesses.

Furthermore, the Committee held hearings on the same subject during the 110th Congress. On July 18, 2007, the Committee held a hearing entitled, "Increasing Government Accountability and Ensuring Fairness in Small Business Contracting." The hearing focused on barriers to success for small businesses, such as complicated regulations, contract bundling, size standards with loopholes for businesses that are other than small, a lack of protections for subcontractors, and a GSA schedule that is difficult to navigate.

The Committee heard from a panel of Administration witnesses and a panel of small business owners about the need for updating federal procurement laws. One of the top concerns of small business owners was the lack of opportunities for small businesses caused by the federal government's growing reliance on contract bundling. The Committee also heard from a number of small businesses about the lack of well-trained small business contracting professionals in the Federal government. The Committee believes that added protections are necessary to expand opportunities for small businesses as both prime and subcontractors.

II. DESCRIPTION OF BILL

TITLE I—CONTRACT BUNDLING

Contract bundling is the consolidation of contracts in a manner that unduly restricts competition, and was originally prohibited under the Competition in Contracting Act (CICA) of 1984. The Small Business Reauthorization Act of 1997 supplemented CICA by defining the bundling of contract requirements as the consolidation of two or more procurement requirements for goods or services previously provided or performed (or suitable for performance) 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. The requirement that at least a portion of the contract be previously performed by small firms allows Federal agencies to avoid bundling review by declaring large consolidations to be new work. The statute allows the Agency to bundle its requirements if the Agency has performed sufficient market research and has justified the bundled action on a cost saving basis.

Generally, a bundled procurement will be found necessary and justified if an agency will derive measurable substantial benefits as a result of consolidating the requirements into one large contract. If the requirement involves “Substantial bundling” and the contract value exceeds specified thresholds—for example, \$2 million for most agencies, \$5 million for the GSA, National Aeronautics and Space Administration (NASA), and Department of Energy (DOE), and \$7 million for the Department of Defense (DoD)—the contracting agency must conduct an internal analysis of the contract, submit a contract to SBA Procurement Center Representatives for review, and take actions to maximize small business participation as subcontractors at various tiers under the contract.

Bundling or consolidation of Federal contracts tends to deprive small firms of business opportunities with the Federal government. The size of a contract, geographic spread of performance, or multiplicity of requirements can prevent small firms from capitalizing on their competitive advantages, including attention to customer service, superior rates of innovation, and lower administrative costs. According to the Office of Federal Procurement Policy (OFPP), small businesses lose more than \$30 dollars for every \$100 awarded on a bundled contract.¹ As a result, contract bundling drastically reduces the Federal government’s supplier base, particularly the defense industrial base. According to the SBA Office of Advocacy, during the time period that contract bundling began to increase, the number of small business contractors receiving new contract awards dropped more than 50 percent, from 26,506 in FY 1991 to 11,651 in FY 2000.²

In Report No. 105–62 on the 1997 SBA Reauthorization Act, this Committee stated,

Often, bundling results in contracts of a size or geographic dispersion that small businesses cannot compete for or obtain. As a result, the government can experience

¹ *Contract Bundling a Strategy for Increasing Federal Contracting Opportunities for Small Business* October 2002 (Executive Office of the President Office of Management and Budget Office of Federal Procurement Policy).

² *Id.*

a dramatic reduction in the number of offerors. This practice, intended to reduce short term administrative costs, can result in a monopolistic environment with a few large businesses controlling the market supply.

Clearly, the fiscal case for reduction in consolidated contracts is strong. For example, the SBA's Breakout Procurement Center Representatives Program—which breaks up large contracts for competition—has saved the Federal government approximately \$2.5 billion since 1985.

In October 2002, the Office of Management and Budget's (OMB) Office of Federal Procurement Policy announced a 9-point initiative to reduce contract bundling by: (1) ensuring accountability of senior agency management for improving contracting opportunities for small businesses; (2) ensuring timely and accurate reporting of contract bundling information through the President's Management Council; (3) requiring contract bundling reviews for task and delivery orders under multiple award contract vehicles; (4) requiring agency review of proposed acquisitions above specified "substantial bundling" thresholds for unnecessary and unjustified contract bundling; (5) requiring identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used; (6) mitigating the effects of contract bundling by strengthening compliance with subcontracting plans; (7) mitigating the effects of contract bundling by facilitating the development of small business teams and joint ventures; (8) identifying best practices that maximize small business opportunities; and (9) dedicating agency Office of Small Disadvantaged Business Utilization (OSDBUs) to the President's Small Business Agenda.

Reviews by the Government Accountability Office (GAO) and the SBA Inspector General (IG) found that many Federal agencies are confused about the statutory definition of bundling. According to GAO report 04-454, *Impact of Strategy to Mitigate Effects of Contract Bundling on Small Business is Uncertain*, agencies claim to be confused by the legal definition of bundling, and officials at two of the four agencies contacted did not know they were mandated to report all potential bundling. Additionally, the SBA IG's *Audit of the Contract Bundling Program*, No. 5-20, found that agencies and the SBA disagree on the definition of bundling. The SBA failed to review more than 80 percent of contracts designated as bundled. According to the IG's report, this failure resulted in almost \$400 million of potential lost opportunities for small businesses. Testimony during the July 18, 2007, hearing entitled "Increasing Accountability and Ensuring Fairness in Federal Contracting" indicated that Federal agencies do not practice unbundling of government contracts.

The Committee believes there is an urgent need for Federal agencies to follow SBA's guidance on bundling and to close the loopholes that lead to contract bundling. The Committee believes that the recommendations of the GAO and the SBA IG on contract bundling must be fully implemented. Specifically, better data on incidents and impact of bundling must be collected.

To mitigate the harmful practices posed by contract bundling and consolidation, through this bill, the Committee requires that each agency solicit bids from small business joint ventures and teams on

each solicitation above the substantial bundling threshold. Further, the bill requires each agency to report on its efforts to reduce bundling. In addition, this bill requires agencies to post their anti-bundling policies on their websites, as well as a list of all bundled contracts and the rationale for bundling.

The Committee believes that Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) can and should be more effective in breaking up bundled contracts. This bill requires a study of the effectiveness of SBA PCRs and CMRs.

Further, this bill requires that the head of each Federal department or agency ensures that the decisions made by that department or agency regarding consolidation of contract requirements are made with a view towards providing small businesses with appropriate opportunities to participate as prime contractors and subcontractors.

The SBA's PCRs monitor Federal agency procurement activity to ensure that (1) appropriate steps are taken to provide contract awards to small businesses, (2) agencies meet their small business contracting goals, and (3) proposed contracts that could involve consolidated procurement requirements are identified and resolved. PCR responsibilities include: reviewing proposed acquisitions and recommending alternative procurement strategies; identifying qualified small business sources; conducting reviews of small business programs at Federal contracting agencies to ensure compliance with small business policies; counseling small businesses; and sponsoring and participating in small business conferences and training.

Unfortunately, the number of PCRs has shrunk dramatically in the last 15 years, and the Committee believes that the failure to maintain sufficient levels of PCRs has diminished the SBA's ability to carry out its statutory mandate. Reports prepared by the GAO disclose that the SBA is struggling to accomplish its mission and lacks the assurances that PCRs are reviewing proposed acquisition strategies to identify barriers to small business participation. The GAO also found that the number of PCR-recommended small business set-asides has declined by more than half in the last ten years.

More important than not, the Committee recognizes that acquisition is a technical discipline that requires knowledge and experience to manage effectively. Therefore, tasking these responsibilities to other SBA employees as a part-time function will not address insufficient staffing levels and is not acceptable. The Committee believes that locating PCRs in the field and involving them in local buying activities improves the ability of these individuals to effectively advocate and assist small businesses with the procurement process.

The Committee believes that preventing contract consolidation is an appropriate way to expand opportunities for small businesses. The justification for consolidation of contracts has historically been that such consolidations reduce personnel and administrative costs. However, the Committee heard testimony to the contrary from Mr. Bill Miera in its May 22, 2007 hearing on minority entrepreneurship. Mr. Miera testified that overhead costs associated with contract consolidation far outweigh any potential cost saving benefits.

claimed by consolidation proponents. Therefore, this legislation establishes that a contract consolidation is not considered to be justified and necessary based solely on administrative and personnel costs savings.

The Committee believes that small businesses will benefit from “teaming” together to bid on larger federal contracts. Many small businesses have been shut out of federal contracting because they do not have the capacity to perform all facets of a contract. At present, it is difficult for a number of small businesses to band together to complete a large project and meet the requirement that a small business perform at least 51 percent of the work. This bill contains provisions designed to improve contracting opportunities for small businesses by allowing Federal agencies to aggregate the portion of a contract performed by separate small businesses in determining whether the performance of the contract is in compliance with federal regulations.

The Committee further believes that providing technical assistance and resources for small businesses interested in teaming and forming joint ventures will encourage more such business ventures. Accordingly, this bill establishes a Small Business Teaming Center Pilot Program for the purpose of expanding technical assistance opportunities for small businesses, as well as for expanding the pool of vendors with the capacity to compete for bundled contracts.

TITLE II—SUBCONTRACTING INTEGRITY

According to the SBA’s Yearly Official Subcontracting Reports, small businesses receive more than \$45 billion in Federal subcontracts each year. Unfortunately, Committee oversight revealed that subcontracting practices have been plagued with overstatements. According to GAO Report 05–459, numerous large contractors have overstated their small business subcontracting achievements—by as much as \$30 million per contract, per year—at one Federal agency alone. The Committee strongly believes that greater compliance and oversight must be implemented government-wide to the fullest extent possible.

In order to prevent misrepresentations in subcontracting, the bill provides that compliance by Federal prime contractors with small business subcontracting plans shall be evaluated as a percentage of obligated prime contract dollars, and also as, a percentage of subcontracts awarded, as recommended by the GAO.

In addition to implementing GAO recommendations, the Committee largely re-adopted small business subcontracting provisions which were passed unanimously by the Senate in the 108th, 109th and 110th Congresses. Small businesses testified before the Committee this Congress and during the 108th, 109th and 110th Congresses that prime contractors baited them by using them to create competitive subcontracting plans, helping the prime contractor win a contract, only to have the prime contractor switch and not follow through with its subcontracting plan commitments once the contract was awarded. As a result, the Committee believes more aggressive action is needed to increase the small business subcontracting share of Federal prime contracts. Therefore, the bill makes several changes to the Small Business Act intended to hold prime contractors responsible for the validity of subcontracting data and

impose penalties for false certifications of past compliance with small business subcontracting.

To prevent prime contractors from taking advantage of small business subcontractors through bait-and-switch fraud, the bill requires large prime contractors to certify that they will use small business subcontractors in the amount and quality used in preparing their winning bid or proposal, unless such firms no longer are in business or can no longer meet the quality, quantity or delivery date. The Committee expects that Federal agencies will use all appropriate legal and contractual remedies to deter, punish, and recover the proceeds of such fraud.

TITLE III—ACQUISITION PROCESS

The bill improves small business participation in the acquisition process. The bill also authorizes small business set-asides in multiple award multi-agency contracting vehicles in order to correct the very mixed record of small business participation in such contracts. These contract types were intended to reduce the administrative costs of contracting by reducing both the number of businesses and the types of terms and conditions which had to be completed for each task or delivery order. Under such contracts, the government negotiates an up-front agreement on future price discounts and delivery terms, but no actual work is performed or paid for until task and delivery orders are issued. In many instances, small businesses have had trouble securing business through the multiple-award contract system. For example, within the GSA Federal Supply Schedules (FSS or Schedules), small businesses represented about 80.8 percent of Schedule holders, but only 37.33 percent of Schedule sales dollars in FY 2007.

The Small Business Act and the Federal Acquisition Regulation require Federal agencies to set contracts aside for small businesses if there is a reasonable expectation that two or more small businesses would submit bids at reasonable prices. However, these general set-aside requirements have been interpreted not to apply to multiple-award contracts. The bill, by authorizing small business set-asides in multiple-award contracts, provides clear direction to contracting officers.

The Committee believes that accountability of procurement personnel is essential to increasing the number of contracts that go to small businesses. This bill adds the meeting of small business procurement goals as a performance evaluation for key procurement personnel within the federal government.

Finally, the Committee believes that it is time to end the Small Business Competitiveness Demonstration Program. Accordingly, this legislation repeals this program.

TITLE IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

In fiscal year 2007, the SBA announced that the Federal government missed its 23 percent contracting goal by .992 percent. These numbers were even worse the next fiscal year. In fiscal year 2008, the SBA reported that the Federal Government missed its goal by 1.51 percent. Further, reports from the GAO and the SBA Office of Advocacy, along with independent analysis presented to the Committee, indicate that these numbers are probably much worse

due to many large corporations self classifying as small businesses for contracting purposes.

Hearings before the Committee established that fraud, regulatory loopholes and delays, and poor training in small business laws and regulations contribute to the problem. Recently, the SBA IG and the Department of Justice achieved a \$1 million settlement with a large corporation that advertised itself as a small business for 10 years. However, prosecutions of companies that misrepresent their small business size and status have been rare.

Under current law, the government has difficulty proving loss when the fraud was in the inducement to receive a contract and not in performance of the contract. The SBA IG testified that such cases still involve both the societal loss and the programmatic loss to the Federal government. To solve this problem, the bill creates an irrefutable statutory presumption that small business size or status fraud constitutes a loss to the government of contracting dollars diverted to large firms on a dollar-for-dollar basis. The Committee intends that this presumption shall be applied in all manner of criminal, civil, administrative, contractual, common law, or other actions, which the United States government may take to redress such fraud and misrepresentation.

In *CMS Information Services, Inc.* (2002), the GAO confirmed that Federal agencies may properly require certification of small business size during the submission of quotations for procurements reserved for small business concerns. Similar to Federal Supply Schedules at issue in the CMS case, S. 2989 requires certification of small business status at the time businesses submit their quotations on task orders on interagency or government-wide multiple award contracts. The SBA reached a similar conclusion in *Size Appeal of SETA Corporation and Federal Emergency Management Agency*, SBA No. SIZ-4477 (2002). The Committee realizes that unforeseen situations may arise and intends for the SBA to fully exercise its discretion.

With regard to task orders on interagency multiple-award contracts, the Committee intends for the SBA, in consultation with relevant Federal agencies, to develop policies on appropriate certification requirements that would take into account and balance the varying features of such contracts, the impact of potential ramp-offs on small business contracting opportunities at the affected agencies, and the need for integrity and adequate disclosure of the actual small business participation. With regard to multiple-award contracts used for intra-agency purposes only, the Committee similarly expects the SBA to exercise its discretion.

The Committee expects that the SBA's discretion will be consistent with the existing legal principle that company size is determined at the time of award based on the company's initial offer. Additionally, the SBA should ensure that reporting on small business participation shall accurately reflect all cases where a contract previously awarded to a small business concern or a small business concern itself has been negated to an entity other than a small business concern through merger, acquisition, divestiture, or otherwise.

The SBA IG testified before the Committee in the 109th Congress that annual certification of small business size or status is

the most effective measure of ensuring integrity of small business contracts.

The Committee agrees with this view. The bill provides for annual certifications of small business size and status and that small business size or status shall be determined, as part of a company's responsibility, at the time of the award of a task order.

The Committee has heard from many small businesses that Federal officials often lack training in small business laws and regulations. The bill directs development of such training courses, and also mandates a policy on prosecutions of small business size and status fraud.

The Committee has heard testimony that the current size standards are in dire need of a comprehensive update. With the increase in large federal contract requirements, small businesses are being squeezed out of the federal marketplace. One way to increase small business viability is to allow small businesses to increase their capacity by increasing small business size standards. The Committee believes that a reasonable increase in small business size standards is warranted in order to allow small businesses to compete in the current federal marketplace.

Under current procurement rules, a contracting officer designates a primary industry category for each contract, and the bidding firm must qualify as a small business under the size standard for that industry category to be given the contract as a small business. Examples of SBA general size standards include the following:

- (1) Manufacturing: maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- (2) Wholesaling: maximum number of employees may range from 100 to 500 depending on the particular product being provided;
- (3) Services: annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided;
- (4) Retailing: annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
- (5) General and heavy construction: general construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
- (6) Special trade construction: annual receipts may not exceed \$7 million;
- (7) Agriculture: annual receipts may not exceed \$0.5 to \$9.0 million, depending on the agricultural product; and
- (8) Small innovative companies participating in the Small Business Innovation Research and the Small Business Technology Transfer Programs: maximum number of employees may not exceed 500, including affiliates.

The Committee also believes that a comprehensive review of mentor-protégé programs is appropriate and provides for that review as a part of this bill.

III. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on March 4, 2010.

A motion by Chair Landrieu to adopt a manager's package in the nature of a substitute, was approved by a unanimous voice vote.

A second motion by the Chair, to adopt the Small Business Contracting Revitalization Act of 2010, to improve the Small Business Act and for other purposes, as amended by the manager's amendment, was also approved by a unanimous vote.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office.

JUNE 1, 2010.

Hon. MARY L. LANDRIEU,
Chair, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed revised cost estimate for S. 2989, the Small Business Contracting Revitalization Act of 2010, which supersedes an earlier estimate for S. 2989 that was transmitted on March 25, 2010. This revised estimate corrects an error in total estimated authorization levels; CBO's estimate of expenditures (budget outlays) from implementing the legislation remains unchanged.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2989—Small Business Contracting Revitalization Act of 2010

Summary: S. 2989 would amend laws that encourage federal agencies to award contracts for goods and services to small businesses. In particular, the bill would make changes to the practice of contract consolidation (combining two or more contracts into a single agreement) and to federal policies that relate to contract set-asides for small businesses. The bill also would authorize a grant program to encourage teams of small businesses to bid on government contracts.

Based on information from the Small Business Administration (SBA) and other agencies with large procurement budgets, CBO estimates that implementing S. 2989 would cost \$422 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

The bill could also affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any net increase in annual spending by those agencies would not be significant. Enacting the legislation would not affect revenues.

S. 2989 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2989 is shown in the following table. The costs

of this legislation fall within budget function 370 (commerce and housing credit) and all other budget functions that include spending to procure goods and services.

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Administration of Governmentwide Procurement:						
Estimated Authorization Level	50	75	90	100	110	425
Estimated Outlays	30	60	90	100	110	390
Grants to Develop Small Business Teams:						
Authorization Level	5	5	5	5	5	25
Estimated Outlays	3	4	4	5	5	21
SBA Administrative Costs:						
Estimated Authorization Level	3	3	3	1	1	11
Estimated Outlays	2	3	3	1	1	10
Reports:						
Estimated Authorization Level	1	0	0	*	0	1
Estimated Outlays	1	0	0	*	0	1
Total Changes:						
Estimated Authorization Level	59	83	98	106	116	462
Estimated Outlays	36	67	97	106	116	422

Note.—* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2010 that the necessary amounts will be appropriated each year, and that spending will follow historical patterns for procurement activities. CBO estimates that implementing S. 2989 would cost \$422 million over the 2011–2015 period.

Administration of governmentwide procurement

S. 2989 is aimed at expanding the access of small businesses to federal contracts, in part by regulating contract bundling and contract consolidation (the practice of combining two or more contracts into a large single agreement). Under the bill, federal agencies would have to justify the use of consolidated contracts by evaluating whether such contracts are necessary and analyzing the effect on small businesses. In addition, the legislation would change federal regulations related to contract set-asides for small businesses. The legislation also would increase responsibilities for contract oversight as well as training requirements for federal agencies to help them meet goals for increasing procurement contracts with small businesses.

The federal government purchases about \$500 billion worth of goods and services each year, from office supplies to parts for aircraft carriers. CBO estimates that over 30,000 federal employees are responsible for administering the procurement of goods and services for the government at a cost of about \$3 billion annually. Based on information from SBA, the General Services Administration, and agencies with the most procurement spending, CBO expects that agencies would incur additional discretionary costs to comply with the bill's requirements to justify consolidated contracts, increase the number of contracts set aside for small businesses, and to identify small business concerns that are able to provide desired goods and services.

Based on the current costs to administer contracts and the size and characteristics of those contracts, and assuming appropriation

of the estimated amounts, CBO estimates that complying with administrative requirements in S. 2989 would cost federal agencies an average of about \$80 million annually over the next five years—less than 3 percent of the amount CBO estimates is currently spent each year to administer the government’s procurement efforts.

Grants to develop small business teams

S. 2989 would establish a pilot program to assemble teams of small businesses that could compete for larger procurement contracts. The bill would require SBA to create a Center for Small Business Teaming and authorize the appropriation of \$5 million annually to make grants to eligible entities that would assemble the small-business teams. Based on information from SBA, CBO estimates that implementing this provision would cost \$21 million over the 2011–2015 period, assuming appropriation of the specified amounts.

SBA administrative costs

Based on information from SBA, CBO estimates that the agency would incur costs to meet additional administrative requirements that arise from changes made by the bill, including establishing the Center for Small Business Teaming and developing an electronic process to monitor procurement activities. CBO estimates that those additional costs would total about \$10 million over the 2011–2015 period, assuming appropriation of the necessary amounts. Those costs include salaries and benefits for five full-time staff to operate the center.

Reports

Finally, the bill would require a number of reports to the Congress from SBA, the Government Accountability Office (GAO), and federal agencies with procurement and contracting activities. GAO would be required to report on the usefulness of SBA’s mentor-protégé program and the results of a study of an SBA program to monitor procurement activities. Based on information from SBA and the costs of similar reports, CBO estimates that implementing the reporting provisions of S. 2989 would cost \$1 million over the 2011–2015 period.

Governmentwide procurement

CBO expects that agencies would continue to encourage the use of small businesses to procure goods and services and would seek to meet the goals for such contracts as set out in the legislation. CBO expects that agencies also would continue to purchase goods and services at the lowest price available and that the goals for small business contracting would be met to the extent that doing so would not significantly increase procurement costs. Thus, we estimate that implementing the bill would not result in a significant change in acquisition costs.

Pay-As-You-Go Consideration: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 2989 could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures

would apply. CBO estimates, however, that any net increase in annual spending by those agencies would not be significant and enacting the legislation would not affect revenues. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 2989, THE SMALL BUSINESS CONTRACTING REVITALIZATION ACT OF 2010, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP ON MARCH 4, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact ...	0	0	0	0	0	0	0	0	0	0	0	0	0

Intergovernmental and private-sector impact: S. 2989 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On March 25, 2010, CBO transmitted a cost estimate for S. 2989, the Small Business Contracting Revitalization Act of 2010. That estimate incorrectly presented total estimated authorization levels for the bill; those amounts are corrected in this estimate. CBO's estimate of total expenditures (budget outlays) from implementing the legislation remains unchanged from the earlier estimate.

Estimate prepared by: Federal Costs: Susan Willie and Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VI. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

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Section 3. Definitions

TITLE I—CONTRACT BUNDLING

Sec. 101. Leadership and oversight

This provision requires each agency to solicit bids from small business joint ventures and teams on each solicitation above the substantial bundling threshold. Further, the provision requires each agency to report on its efforts to reduce bundling.

In addition, the provision requires agencies to post their anti-bundling policies on their websites as well as a list of all bundled contracts and the rationale for bundling. Last, the provision requires a study of the effectiveness of SBA Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs).

Sec. 102. Consolidation of contract requirements

This section requires that the head of each Federal department or agency ensures that the decisions made by that department or agency regarding consolidation of contract requirements are made with a view to providing small businesses with appropriate opportunities to participate as prime contractors and subcontractors.

Sec. 103. Small business teams pilot program

This section creates a Center for Small Business Teaming. The purpose of the Center is to provide technical assistance through competitive grants with well-established national small business organizations to small businesses that want to team or joint venture. The goal is to allow more small businesses to compete for bundled contracts as teams or joint ventures.

TITLE II—SUBCONTRACTING INTEGRITY

Sec. 201. GAO recommendations on subcontracting misrepresentations

This section is designed to prevent misrepresentations in subcontracting by implementing government-wide the Comptroller General's recommendations on subcontracting integrity. Specifically, compliance of Federal prime contractors with small business subcontracting plans shall be evaluated as a percentage of obligated prime contract dollars, and also a percentage of subcontracts awarded. Further, not later than 180 days from the date of enactment of this Act, the head of each Federal agency shall issue a policy on small business subcontracting compliance.

Sec. 202. Small business subcontracting improvements

This section requires prime contractors to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from small business concerns in the amount and quality used in preparing the bid or proposal, unless such 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

This provision requires that within 180 days of enactment, each agency head establish contracting criteria for their agency that: (1) sets aside part of multiple awards contracts for small businesses; (2) sets aside multiple awards contracts for subcategories of small businesses; and (3) reserve one or more contracts for small businesses and subcategories of small businesses for multiple full and open awards.

Sec. 302. Micro-purchase guidelines

Within 180 days, the director of the Office of Management and Budget shall issue guidelines for the use of purchase cards to measure the participation of small business in government micro purchases. These guidelines shall be consistent with existing national policy on small business participation in micro purchase credit purchases.

Sec. 303. Agency accountability

This provision requires the senior personnel of each agency to communicate to the agency's subordinates the importance of meeting small business goals. Further, this provision requires that each program manager and procurement professional have as a significant factor in their annual evaluation whether they have met their obligation to utilize small businesses.

Sec. 304. Payment of subcontractors

This provision requires prime contractors to notify the contracting officer whenever they reduce payment to a subcontractor or where they are more than 90 days delinquent paying subcontractors where the prime contractor has been paid for the covered service by the federal agency or where the prime contractor has submitted a request for payment to the federal agency. Additionally, a contracting officer shall consider failure to pay subcontractors in a timely manner when evaluating past performance of the subject contractor. Further, a contracting officer may require a contractor with a history of untimely payments to enter into a funds control agreement for the purposes of paying subcontractors in a timely manner.

Sec. 305 Repeal of small business competitiveness demonstration program

This provision repeals the small business competitiveness demonstration program.

TITLE IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

Sec. 401. Policy and presumptions

The provision contains an irrefutable presumption of a dollar-for-dollar loss to the United States in every contract, subcontract, cooperative agreement, cooperative R & D agreement, or grant reserved for small business concerns which is obtained by misrepresentation of small business size or status. The provision also establishes that submissions of bids or proposals on contracts, agreements, or grants reserved for small business, or registrations in Federal databases to be considered as a small business concern, constitutes an affirmative certification of small business size or status. Finally, the provision requires that every contract or grant solicitation contain a place for certification of small business size or status by a high-level corporate official of the contractor. The provision allows the SBA Administrator to issue "safe harbor" regulations to protect contractors from liability for unintentional errors and technical glitches.

Sec. 402. Annual certification

This provision requires annual certification of small business size or status on the SBA's CCR database or any successor database. The provision also clarified the timing of determination of small business size and status. Specifically, small business size or status shall be determined at the time of award of a Federal contract, subcontract, or other funding instrument. For interagency multiple-award contracts, small business size and status will be determined at the time of the award of the contract and also at the time of the award of each task or delivery order reserved for a small business.

Sec. 403. Training for contracting and enforcement personnel

This provision directs the SBA, together with other agencies, to develop training on small business size standards. The provision also directs the SBA IG and heads of other agencies to issue a policy on prosecutions of size standards or status fraud.

Sec. 404. Updated size standards

This section requires the SBA to conduct a detailed review of the size standards for small businesses not later than one year after enactment, and if the SBA deems it appropriate, the provision directs the SBA to publish revised size standards. This section also requires the SBA to make public the factors evaluated and criteria used in its size standard review.

Sec. 405. Study and report on the mentor-protégé program

This provision requires GAO to study the effectiveness of the mentor-protégé program. The GAO is required to evaluate whether the program has been an effective tool for protégé development and not a tool whereby mentors qualify themselves for small business contracts with little or no benefit to the protégé firm.