

Calendar No. 106

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-288

SMALL BUSINESS FAIRNESS ACT OF 2015

JUNE 28, 2016.—Ordered to be printed

Mr. VITTER, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 958]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 958) to amend the Small Business Act to provide for team and joint venture offers for certain contracts, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The Small Business Fairness Act (S. 958) was introduced by Senator Enzi, with original co-sponsorship from Senator Casey, on April 15, 2015.

The Small Business Fairness Act enhances small businesses' ability to compete for federal contracting opportunities. It does so by changing how agencies consider small business teaming and joint ventures in relation to small business contracting goals and prior experience of the small business within the teaming or joint venture.

During the markup of the bill, the Vitter amendment to the bill was approved unanimously by voice vote. The Vitter amendment provides that prior experience shall be taken into consideration when assessing a firm's ability to bid as part of a team. The bill, as amended, was also approved unanimously by voice vote.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

Teaming and joint venture allowances for small businesses are designed to enhance small businesses' ability to compete for federal contracting opportunities. The Small Business Act encourages

small businesses to team and joint venture, and the SBA will approve joint ventures to facilitate small businesses participating on federal contracts. In the 112th Congress, the Committee-passed legislation that was included in the FY 2012 National Defense Authorization Act to make it easier for small businesses to team by changing the limitations on subcontracting. However, small businesses that do team and joint venture are often unsuccessful at winning contracts when the agency will only consider the past performance or financial responsibility of the joint venture or the prime contractor, not the small business members of the joint venture or the parties to the team. As many joint ventures are unpopulated, this all but disqualifies the small business from competition.

Similar or identical legislation was introduced by Senators Enzi and Casey in June of 2013 (S. 1190) and May of 2011 (S. 1110).

III. HEARINGS & ROUNDTABLES

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In the 112th Congress, the Committee held a hearing entitled “Creating Jobs and Growing the Economy: Legislative Proposals to Strengthen the Entrepreneurial Ecosystem” on November 29, 2012. Various testimonies recognized the need for reforming the way in which government contracts with small businesses are implemented and regulated, and discussed a number of potential improvements that could be made via legislation. However, the vast majority of the changes discussed only dealt with the size and scope of contracts, rather than how the businesses are considered and selected.

IV. DESCRIPTION OF BILL

The bill permits agencies to count towards their small business contracting goals contracts awarded under teaming arrangements where a small business works with a prime contractor to perform the work under the agreement. This legislation requires agencies to give due consideration to the capabilities and past performance of the small businesses that submit offers as teams or joint ventures. This will allow more small businesses to compete for contracts.

The amendment clarifies that prior experience shall be taken into consideration when assessing a firm’s ability to bid as part of a team.

V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on April 23, 2015.

A motion to adopt the Small Business Fairness Act of 2015, a bill to amend the Small Business Act to provide for team and joint venture offers for certain contracts, as amended by the Vitter amendment, was approved unanimously by voice vote with the following Senators present: Senators Vitter, Risch, Fischer, Gardner, Ernst, Ayotte, Enzi, Shaheen, Cantwell, Cardin, Heitkamp, Booker, Coons, Hirono, and Peters.

VI. 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 9, 2015.

Hon. DAVID VITTER,
Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 958, the Small Business Fairness Act.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 958—Small Business Fairness Act

Summary: S. 958 would amend the Small Business Act to allow small businesses to join together to submit bids for federal contracts. The Small Business Administration (SBA) would have one year to issue regulations to implement this authority.

CBO estimates that implementing S. 958 would increase the administrative costs of federal agencies by \$25 million over the 2016–2020 period, assuming the availability of appropriated funds. Enacting S. 958 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from the sale of goods, fees, and other collections to cover their operating costs. Therefore, pay-as-you-go procedures apply. Because most of those agencies can make adjustments to the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would not be significant. Enacting the bill would not affect revenues.

S. 958 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. 958 is shown in the following table. The costs of this legislation would fall within budget functions 050 (national defense), 800 (general government) and all other budget functions that include administrative costs for procurement.

	By fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	10	6	3	3	3	25
Estimated Outlays	10	6	3	3	3	25

Basis of estimate: For this estimate, CBO assumes that S. 958 will be enacted in late 2015 and that spending will follow historical patterns for similar activities.

S. 958 would amend the Small Business Act to allow small businesses to join together to submit bids for bundled, consolidated, and multiple-award federal contracts. When evaluating procurement bids, the legislation would require agencies to consider the capabilities, prior experience, and past performance of the joint team of small businesses collectively. A small business participating in such a joint bid would still be considered a small business.

Using information from the Office of Personnel Management, CBO estimates that more than 36,000 federal employees are responsible for administering the procurement of goods and services for the government at a cost of more than \$3 billion annually. Based on information from SBA and the General Services Administration (GSA) about the costs of prior modifications to federal procurement laws, CBO estimates that implementing S. 958 would cost \$25 million over the 2016–2020 period. Most of those amounts would be used to train procurement staff on new rules for evaluating procurement bids from teams of small businesses. Federal agencies also would need to modify their computer systems used in the procurement process to accommodate the small business teams. In subsequent years federal procurement offices would need to issue new certifications to confirm that teams of small businesses qualify as small businesses under procurement laws. Under S. 958, CBO expects that agencies would continue to procure goods and services at the lowest price available; therefore, we estimate that implementing S. 958 would not significantly increase the cost of goods and services procured by the federal government.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting S. 958 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from the sale of goods, fees, and other collections to cover their operating costs. Therefore, pay-as-you-go procedures apply. Because most of those agencies can adjust the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would not be significant. Enacting the bill would not affect revenues.

Intergovernmental and private-sector impact: S. 958 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Matthew Pickford; Impact on state, local, and tribal governments: Logan Smith; Impact on the private sector: Melissa Merrell.

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

VII. 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.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1. Title

This section provides the title, the “Small Business Fairness Act of 2015”.

Section 2. Joint venturing and teaming

Section 2(a)—Amends Section 15(e)(4) of the Small Business Act, which allows small businesses to bid as a joint venture or team on a bundled or consolidated contract. While the Small Business Act already allows small business teams and joint ventures to bid on consolidated or bundled contracts, it does not address how agencies should evaluate these proposals.

New paragraph (4)(A)—Reaffirms that small businesses may joint venture and team for these contracts, as currently provided in paragraph (4).

New paragraph (4)(B)—Requires agencies to consider the capability of all members of a small business joint venture or team. Specifically, clause (i) requires that agencies consider the capabilities of first tier subcontractors when a small business prime contractor teams with other small businesses. Clause (ii) requires that when two or more small businesses form a joint venture to bid on a bundled or consolidated contract, the agency must consider the capabilities, prior experience, and past performance of the members of the joint venture. This is particularly important, since most small business joint ventures are not populated.

New paragraph (4)(C)—Reaffirms that when small businesses joint venture or team to compete for bundled and consolidated contracts, the Small Business Administration (SBA) cannot find that they are no longer small as a result of that joint venture or team.

Section 2(b)—Amends Section 15(q)(1) of the Small Business Act, which allows small businesses to bid as a joint venture or team on multiple award contracts. While the Small Business Act already allows small business teams and joint ventures to bid on multiple award contracts, it does not address how agencies should evaluate these proposals.

Paragraph (1)—Changes the title of subsection (q)(1) to better reflect its purpose.

Paragraph (2)—Renumbers the subsection and adds:

The new paragraph (B) requires that agencies consider the capabilities of first tier subcontractors when a small business prime contractor teams with other small businesses.

New paragraph (C) requires that when two or more small businesses form a joint venture to bid on a bundled or consolidated contract, the agency must consider the capabilities, prior experience, and past performance of the members of the joint venture.

New paragraph (D) requires that if competition for the contract was limited to small businesses, women-owned small businesses, HUBZones, or service-disabled veteran-owned small businesses, the composition of the team or joint venture must be reassessed each year to make sure the team or joint venture qualifies for the contract, unless the contract was awarded under an approved mentor-protégé program.

Section 2(c)—Requires that SBA complete any necessary rulemakings to implement this change within one year.

