

109TH CONGRESS  
1ST SESSION

# S. 137

To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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# A BILL

To modify the contract consolidation requirements in the Small Business Act, 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 “Small Business Fed-  
5       eral Contractor Safeguard Act of 2005”.

**6 SEC. 2. CONTRACT CONSOLIDATION.**

7       (a) DEFINITIONS.—Section 3(o) of the Small Busi-  
8       ness Act (15 U.S.C. 632(o)) is amended to read as follows:

9       “(o) DEFINITIONS RELATING TO CONSOLIDATION OF  
10      CONTRACT REQUIREMENTS.—For purposes of this Act—

1           “(1) the terms ‘consolidation of contract re-  
2 quirements’ and ‘consolidation’, with respect to con-  
3 tract requirements of a military department, De-  
4 fense Agency, Department of Defense Field Activity,  
5 or any other Federal department or agency having  
6 contracting authority mean a use of a solicitation to  
7 obtain offers for a single contract or a multiple  
8 award contract to satisfy 2 or more requirements of  
9 that department, agency, or activity for goods or  
10 services that—

11           “(A) have previously been provided to or  
12 performed for that department, agency, or ac-  
13 tivity under 2 or more separate contracts that  
14 are smaller in cost than the total cost of the  
15 contract for which the offers are solicited; or

16           “(B) are of a type capable of being pro-  
17 vided or performed by a small business concern  
18 for that department, agency, or activity under  
19 2 or more separate contracts that are smaller in  
20 cost than the total cost of the contract for  
21 which the offers are solicited;

22           “(2) the term ‘multiple award contract’  
23 means—

24           “(A) a contract that is entered into by the  
25 Administrator of General Services under the

1 multiple award schedule program referred to in  
2 section 2302(2)(C) of title 10, United States  
3 Code;

11                   “(C) any other indeterminate delivery, in-  
12                   determinate quantity contract that is entered  
13                   into by the head of a Federal agency with 2 or  
14                   more sources pursuant to the same solicitation;  
15                   and

16                   “(3) the term ‘senior procurement executive’  
17                   means—

23                             “(B) with respect to a Defense Agency or  
24                             a Department of Defense Field Activity, the of-

1 ficial so designated for the Department of De-  
2 fense; and

3 “(C) with respect to a Federal department  
4 or agency other than those referred to in sub-  
5 paragraphs (A) and (B), the official so des-  
6 ignated by that department or agency.”.

7 (b) PROCUREMENT STRATEGIES.—Section 15(e) of  
8 the Small Business Act (15 U.S.C. 644(e)) is amended—  
9 (1) in paragraph (2)—

10 (A) by striking “.—  
11 “(A) IN GENERAL ”; and  
12 (B) by striking subparagraphs (B) and  
13 (C); and

14 (2) by amending paragraph (3) to read as fol-  
15 lows:

16 “(3) LIMITATION ON USE OF ACQUISITION  
17 STRATEGIES INVOLVING CONSOLIDATION.—

18 “(A) CERTAIN DEFENSE CONTRACT RE-  
19 QUIREMENTS.—An official of a military depart-  
20 ment, defense agency, or Department of De-  
21 fense Field Activity shall not execute an acqui-  
22 sition strategy that includes a consolidation of  
23 contract requirements of the military depart-  
24 ment, agency, or activity with a total value in

3 “(i) conducts market research;

19 “(i) conducts market research;

1                             “(C) ADDITIONAL REQUIREMENTS FOR  
2                             HIGHER VALUE CONSOLIDATED CONTRACTS.—

3                             In addition to meeting the requirements under  
4                             subparagraph (A) or (B), a procurement strat-  
5                             egy by a civilian agency that includes a consoli-  
6                             dated contract valued at more than \$5,000,000,  
7                             or by a defense agency that includes a consoli-  
8                             dated contract valued at more than \$7,000,000  
9                             shall include—

10                             “(i) an assessment of the specific im-  
11                             pediments to participation by small busi-  
12                             ness concerns as prime contractors that  
13                             will result from the consolidation;

14                             “(ii) the identification of the alter-  
15                             native strategies that would reduce or min-  
16                             imize the scope of the consolidation and  
17                             the rationale for not choosing those alter-  
18                             natives;

19                             “(iii) actions designed to maximize  
20                             small business participation as prime con-  
21                             tractors, including provisions that encour-  
22                             age small business teaming for the consoli-  
23                             dated requirement; and

24                             “(iv) actions designed to maximize  
25                             small business participation as subcontrac-

4                     “(D) NECESSARY AND JUSTIFIED.—A sen-  
5                     ior procurement executive may determine that  
6                     an acquisition strategy involving a consolidation  
7                     of contract requirements is necessary and justi-  
8                     fied for purposes of subparagraph (A), (B), or  
9                     (C), if the benefits of the acquisition strategy  
10                    substantially exceed the benefits of each of the  
11                    possible alternative contracting approaches  
12                    identified under clause (ii) of any of those sub-  
13                    paragraphs, as applicable. Savings in adminis-  
14                    trative or personnel costs alone shall not con-  
15                    stitute, for such purpose, a sufficient justifica-  
16                    tion for a consolidation of contract require-  
17                    ments in a procurement, unless the total  
18                    amount of the cost savings is expected to be  
19                    substantial in relation to the total cost of the  
20                    procurement.

21                   “(E) BENEFITS.—Benefits considered for  
22                   purposes of this paragraph may include cost  
23                   and, regardless of whether quantifiable in dollar  
24                   amounts—

25 “(i) quality;

1                         “(ii) acquisition cycle;  
2                         “(iii) terms and conditions; and  
3                         “(iv) any other benefit directly related  
4                         to national security or homeland defense.”.

5                 (c) ADDITIONAL TO TECHNICAL ADVISERS.—Section  
6 15(k) of the Small Business Act (15 U.S.C. 644(k)) is  
7 amended—

8                         (1) in paragraph (5), by striking “bundled con-  
9                         tract” and inserting “consolidated contract”; and  
10                         (2) in paragraph (8), by striking “representa-  
11                         tive—” and inserting “representative at each major  
12                         procurement center under subsection (l)(1)—”.

13                 (d) PROCUREMENT CENTER REPRESENTATIVES.—  
14 Section 15(l) of the Small Business Act (15 U.S.C. 644(l))  
15 is amended—

16                         (1) by redesignating paragraphs (2) through  
17                         (7) as paragraphs (3) through (8), respectively;  
18                         (2) by striking “(l)(1)” and inserting “(2)”;  
19                         (3) by inserting before paragraph (2), as redes-  
20                         gnated, the following:

21                         “(l)(1) The Administration shall assign not fewer  
22                         than 1 procurement center representative at each major  
23                         procurement center, in addition to not fewer than 1 for  
24                         each State.”;

1 (4) in paragraph (2), as redesignated, by striking  
2 ing “to the representative referred to in subsection  
3 (k)(6)” and inserting “to the traditional procure-  
4 ment center representative and the commercial mar-  
5 ket representative, with each such position filled by  
6 a different individual, and each such representative  
7 having separate and distinct duties and responsibil-  
8 ities.”; and

9 (5) by striking “paragraph (2)” each place that  
10 term appears and inserting “paragraph (3)”.

11 (e) REPORT REQUIREMENTS.—Section 15(p)(4)(B)  
12 of the Small Business Act (15 U.S.C. 644(p)(4)(B)) is  
13 amended—

14 (1) in clause (i), by striking “and” at the end;

15 (2) in clause (ii), by striking the period at the

16 end and inserting the following: “; and”; and

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

21 (f) CONFORMING AMENDMENTS.—Section 15(p) of  
22 the Small Business Act (15 U.S.C. 644(p)) is amended—  
23 (1) in the subsection heading, by striking  
24 “BUNDLED CONTRACTS” and inserting “CONSOLI-  
25 DATED CONTRACTS”;

4 (3) in the heading to paragraph (4), by striking  
5 “CONTRACT BUNDLING” and inserting “CONTRACT  
6 CONSOLIDATION”;

10 (5) by striking “bundled contract” each place  
11 that term appears and inserting “consolidated con-  
12 tract”;

13 (6) by striking “bundling of contract require-  
14 ments” each place that term appears and inserting  
15 “consolidation of contract requirements”;

19 (8) in paragraph (4)(B)(ii)(I), by striking  
20 “were bundled” and inserting “were consolidated”;

21 (9) in paragraph (4)(B)(ii)(II)(bb), by striking  
22 “bundling the contract requirements” and inserting  
23 “the consolidation of contract requirements”; and

1 (10) in paragraph (4)(B)(ii)(II)(cc), by striking  
2 “bundled status” and inserting “consolidated sta-  
3 tus”.

#### **4 SEC. 3. AGENCY ACCOUNTABILITY.**

5 (a) IN GENERAL.—Each procurement employee—  
6       (1) shall communicate to their subordinates the  
7       importance of achieving small business goals; and  
8       (2) shall have as an annual performance evalua-  
9       tion factor, if appropriate, the success of that pro-  
10       curement employee in small business utilization, in  
11       accordance with the goals established under this sec-  
12       tion.

13 (b) DEFINITION.—As used in this section, the term  
14 “procurement employee” means a senior procurement ex-  
15 ecutive, senior program manager, or small and disadvan-  
16 taged business utilization manager of a Federal agency  
17 having contracting authority.

## 18 SEC. 4. SMALL BUSINESS PARTICIPATION IN PRIME CON- 19 TRACTING

20 (a) RESERVED CONTRACTS.—Section 15(j) of the  
21 Small Business Act (15 U.S.C. 644(j)) is amended by add-  
22 ing at the end the following:

23       “(4) Any adjustment to the simplified acquisition  
24 threshold (as defined in section 4(11) of the Office of Fed-  
25 eral Procurement Policy Act (41 U.S.C. 403(11))), shall

1 be immediately matched by an identical adjustment to the  
2 small business reserve for purposes of this subsection.”.

3 (b) PARTICIPATION IN MULTIPLE AWARD CON-  
4 TRACTS.—Section 15(j) of the Small Business Act (15  
5 U.S.C. 644(j)) is amended—

6 (1) in paragraph (2), by striking “(2) In car-  
7 rying out paragraph (1)” and inserting “(3) In car-  
8 rying out paragraphs (1) and (2)”;

9 (2) in paragraph (3), by striking “(3) Nothing  
10 in paragraph (1)” and inserting “(4) Nothing in this  
11 subsection”; and

12 (3) by inserting after paragraph (1) the fol-  
13 lowing:

14 “(2)(A) In the case of orders under multiple award  
15 contracts, including Federal Supply Schedule contracts  
16 and multi-agency contracts, that are subject to the small  
17 business reserve, contracting officers shall consider not  
18 fewer than 2 small business concerns if such small busi-  
19 ness concerns can offer the items sought by the con-  
20 tracting officer on competitive terms, with respect to price,  
21 quality, and delivery schedule, with the goods or services  
22 available in the market.

23 “(B) If only 1 small business concern can satisfy the  
24 requirement, the contracting officer shall include such  
25 small business concern in their evaluation.”.

(c) REPORT REQUIREMENT.—

7 (A) the Small Business Administration;

10 (C) the Committee on Small Business of  
11 the House of Representatives.

12 (2) CONTENTS.—Each report submitted under  
13 paragraph (1) shall contain, for the 6-month report-  
14 ing period—

15 (A) the total number of multiple award  
16 contracts;

17 (B) the total number of small business  
18 concerns that received multiple award contracts;

19 (C) the total number of orders;

20 (D) the total value of orders:

21 (E) the number of orders received by small  
22 business concerns;

23 (F) the value of orders received by small  
24 business concerns;

1 (G) the number of small business concerns  
2 that received orders; and  
3 (H) such other information that the Com-  
4 troller General considers relevant.

5 SEC. 5. SMALL BUSINESS PARTICIPATION IN SUBCON-  
6 TRACTING.

7 (a) CERTIFICATIONS REQUIRED.—Section 8(d)(6) of  
8 the Small Business Act (15 U.S.C. 637(d)(6)) is amend-  
9 ed—

10 (1) in subparagraph (E), by striking “and” at  
11 the end;

12 (2) in subparagraph (F), by striking the period  
13 at the end and inserting “; and”; and

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

15                 “(G) certification that the offeror or bidder will  
16                 acquire articles, equipment, supplies, services, or  
17                 materials, or obtain the performance of construction  
18                 work from small business concerns in the amount  
19                 and quality used in preparing the bid or proposal,  
20                 unless such small business concerns are no longer in  
21                 business or can no longer meet the quality, quantity,  
22                 or delivery date.”.

23 (b) PENALTIES FOR FALSE CERTIFICATIONS.—Sec-  
24 tion 16(f) of the Small Business Act (15 U.S.C. 645(f))

1 is amended by striking “of this Act” and inserting “or  
2 the reporting requirements of section 8(d)(11)”.

3 **SEC. 6. EVALUATING SUBCONTRACT PARTICIPATION IN**  
4 **AWARDING CONTRACTS.**

5 (a) SIGNIFICANT FACTORS.—Section 8(d)(4)(G) of  
6 the Small Business Act (15 U.S.C. 637(d)(4)(G)) is  
7 amended by striking “a bundled” and inserting “any”.

8 (b) EVALUATION REPORTS.—Section 8(d)(10) of the  
9 Small Business Act (15 U.S.C. 637(d)(10)) is amended—  
10 (1) by striking “is authorized to” and inserting  
11 “shall”;

12 (2) in subparagraph (B), by striking “and” at  
13 the end;

14 (3) in subparagraph (C), by striking the period  
15 at the end and inserting “; and”; and

16 (4) by adding at the end the following:  
17 “(D) report the results of each evaluation under  
18 subparagraph (C) to the appropriate contracting of-  
19 ficers.”.

20 (c) CENTRALIZED DATABASE; PAYMENTS PENDING  
21 REPORTS.—Section 8(d) of the Small Business Act (15  
22 U.S.C. 637(d)) is amended—

23 (1) by redesignating paragraph (11) as para-  
24 graph (14); and

(2) by inserting after paragraph (10) the following:

3       “(11) CERTIFICATION.—A report submitted by the  
4 prime contractor pursuant to paragraph (6)(E) to deter-  
5 mine the attainment of a subcontract utilization goal  
6 under any subcontracting plan entered into with a Federal  
7 agency under this subsection shall contain the name and  
8 signature of the president or chief executive officer of the  
9 contractor, certifying that the subcontracting data pro-  
10 vided in the report are accurate and complete.

11       “(12) CENTRALIZED DATABASE.—The results of an  
12 evaluation under paragraph (10)(C) shall be included in  
13 a national centralized governmentwide database.

14        "(13) PAYMENTS PENDING REPORTS.—Each Federal  
15 agency having contracting authority shall ensure that the  
16 terms of each contract for goods and services includes a  
17 provision allowing the contracting officer of an agency to  
18 withhold an appropriate amount of payment with respect  
19 to a contract (depending on the size of the contract) until  
20 the date of receipt of complete, accurate, and timely sub-  
21 contracting reports in accordance with paragraph (11).".

22 (d) REFERRAL OF MATERIAL BREACH TO INSPEC-  
23 TORS GENERAL.—Section 8(d)(8) of the Small Business  
24 Act (15 U.S.C. 637(d)(8)) is amended by adding at the  
25 end the following: “A material breach described in this

1 paragraph shall be referred for investigation to the Inspector  
2 General (or the equivalent) of the affected agency.”.

3 **SEC. 7. BUSINESSLINC REPORT TO CONGRESS.**

4 Section 8(n) of the Small Business Act (15 U.S.C.  
5 637(n)) is amended—

6 (1) by redesignating paragraph (3) as para-  
7 graph (4); and

8 (2) by adding after paragraph (2) the following:  
9 “(3) ANNUAL REPORT.—

10 “(A) IN GENERAL.—The Associate Administrator  
11 of Business Development of the Admin-  
12 istration shall collect data on the  
13 BusinessLINC program and submit an annual  
14 report by April 30 of each year on the effective-  
15 ness of the program to the Committee on Small  
16 Business and Entrepreneurship of the Senate  
17 and the Committee on Small Business of the  
18 House of Representatives.

19 “(B) CONTENTS.—The report submitted  
20 under subparagraph (A) shall include—

21 “(i) the number of programs adminis-  
22 tered in each State;  
23 “(ii) the corresponding grant awards  
24 and the date of each award;

1                     “(iii) the dollar amount of the con-  
2                     tracts in effect in each State as a result of  
3                     the BusinessLINC program; and  
4                     “(iv) the number of teaming arrange-  
5                     ments or partnerships created as a result  
6                     of the BusinessLINC program.”.

○