

111TH CONGRESS
2D SESSION

S. 3101

To reduce barriers to entry in Federal contracting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2010

Mr. TESTER introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To reduce barriers to entry in Federal contracting, 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 “Level Playing Field
5 Contracting Act of 2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) The term “executive agency” has the mean-
9 ing given the term in section 4 of the Office of Fed-
10 eral Procurement Policy Act (41 U.S.C. 403).

1 (2) The term “small business concern” has the
 2 meaning given the term in section 3 of the Small
 3 Business Act (15 U.S.C. 632).

4 **SEC. 3. REDUCED BUNDLING OF FEDERAL CONTRACTS.**

5 (a) DEFINITIONS.—In this section:

6 (1) COVERED CONSOLIDATED CIVILIAN CON-
 7 TRACT.—The term “covered consolidated civilian
 8 contract”—

9 (A) means—

10 (i) a multiple award contract valued
 11 in excess of \$2,000,000; or

12 (ii) a contract of an executive agency
 13 for property or services valued in excess of
 14 \$2,000,000 that—

15 (I) combines discrete procure-
 16 ment requirements from 2 or more ex-
 17 isting contracts;

18 (II) adds new, discrete procure-
 19 ment requirements to an existing con-
 20 tract; or

21 (III) includes 2 or more discrete
 22 procurement or acquisition require-
 23 ments; and

1 (B) does not include any consolidated ac-
2 quisition, procurement, or contracting plan of
3 the Department of Defense.

4 (2) COVERED CONSOLIDATED DEFENSE CON-
5 TRACT.—The term “covered consolidated Defense
6 contract” means—

7 (A) a multiple award contract of the De-
8 partment of Defense valued in excess of
9 \$7,500,000; or

10 (B) a contract of the Department of De-
11 fense for property or services valued in excess
12 of \$7,500,000 that—

13 (i) combines discrete procurement re-
14 quirements from 2 or more existing con-
15 tracts;

16 (ii) adds new, discrete procurement
17 requirements to an existing contract; or

18 (iii) includes 2 or more discrete pro-
19 curement or acquisition requirements.

20 (b) RESTRICTION ON CIVILIAN CONTRACT BUN-
21 DLING.—

22 (1) IN GENERAL.—Not later than 180 days
23 after the date of the enactment of this Act, the Fed-
24 eral Acquisition Regulatory Council shall amend the
25 Federal Acquisition Regulation to require that the

1 head of an executive agency may not enter into a
2 covered consolidated civilian contract unless the sen-
3 ior procurement official for the agency determines
4 that the consolidation of such contract is necessary
5 and justified.

6 (2) NECESSARY AND JUSTIFIED DETERMINA-
7 TIONS.—

8 (A) REQUIRED CRITERIA.—In making a
9 determination that a contract is necessary and
10 justified pursuant to paragraph (1), the head of
11 an executive agency shall—

12 (i) identify the benefits anticipated
13 from the consolidation;

14 (ii) identify any alternative con-
15 tracting approaches that would involve a
16 lesser degree of contract consolidation; and

17 (iii) justify how the consolidation sub-
18 stantially exceeds the benefits of any alter-
19 native contracting approaches.

20 (B) RESTRICTIONS ON BASIS OF DETER-
21 MINATION.—The head of an executive agency
22 may not base a determination that a contract is
23 necessary and justified solely on savings in
24 agency administrative or personnel costs or lack
25 of a sufficient procurement workforce.

1 (c) RESTRICTION ON DEFENSE CONTRACT BUN-
2 DLING.—

3 (1) IN GENERAL.—Not later than 180 days
4 after the date of the enactment of this Act, the Sec-
5 retary of Defense shall modify the Department of
6 Defense Supplement to the Federal Acquisition Reg-
7 ulation to require that the head of an agency may
8 not enter into a covered consolidated Defense con-
9 tract unless the senior procurement official for the
10 agency determines that the consolidation of such
11 contract is necessary and justified or that such con-
12 solidation is appropriate in the face of exigent cir-
13 cumstances and national security.

14 (2) NECESSARY AND JUSTIFIED DETERMINA-
15 TIONS.—

16 (A) REQUIRED CRITERIA.—In making a
17 determination that a contract is necessary and
18 justified pursuant to paragraph (1), the head of
19 an agency shall—

20 (i) identify the benefits anticipated
21 from the consolidation;

22 (ii) identify any alternative con-
23 tracting approaches that would involve a
24 lesser degree of contract consolidation; and

1 (iii) justify how the consolidation sub-
 2 stantially exceeds the benefits of any alter-
 3 native contracting approaches.

4 (B) RESTRICTIONS ON BASIS OF DETER-
 5 MINATION.—The head of an agency may not
 6 base a determination that a contract is nec-
 7 essary and justified solely on savings in agency
 8 administrative or personnel costs or lack of a
 9 sufficient procurement workforce.

10 **SEC. 4. QUANTITATIVE METHODOLOGY FOR EVALUATION**
 11 **OF CONTRACT BIDS.**

12 Not later than 180 days after the date of the enact-
 13 ment of this Act, the Federal Acquisition Regulatory
 14 Council shall amend the Federal Acquisition Regulation
 15 to require the head of an executive agency—

16 (1) to use a numeric grading or other quan-
 17 titative methodology to evaluate bid proposals for
 18 each contract of such agency that is awarded
 19 through full and open competitive procedures; and

20 (2) to disclose the methodology in the bid solici-
 21 tation documents for the contract.

22 **SEC. 5. ENFORCEMENT OF LOCAL WORKFORCE REQUIRE-**
 23 **MENTS.**

24 (a) GSA REPORT.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, and an-
3 nually thereafter, the Administrator of General Serv-
4 ices shall submit to Congress a report describing ef-
5 forts to enforce the local workforce subcontracting
6 requirements included in contracts entered into by
7 the General Services Administration. The report
8 shall include an assessment of the effectiveness of
9 enforcement efforts related to such requirements and
10 proposals to better enforce the requirements.

11 (2) EFFORTS TO REMEDY NONCOMPLIANCE
12 WITH REQUIREMENTS.—If local workforce subcon-
13 tracting requirements have not been met in any con-
14 tract entered into by the General Services Adminis-
15 tration, the report required under this subsection
16 shall include a description of efforts made by the
17 General Services Administration to meet the require-
18 ments in such contract.

19 (b) GAO REPORT.—Not later than 180 days after
20 submission of the first report required under subsection
21 (a), the Comptroller General of the United States shall
22 submit to Congress a report commenting on the findings
23 described in such report and including recommendations
24 for further actions to ensure compliance with local work-
25 force subcontracting requirements.

1 **SEC. 6. ACQUISITION WORKFORCE IMPROVEMENTS.**

2 (a) EVALUATION AND REPORT.—Not later than 180
3 days after the date of the enactment of this Act, the head
4 of each executive agency shall submit to Congress a report
5 evaluating the strength and sufficiency of its acquisition
6 workforce.

7 (b) CONTENT.—The report required under subsection
8 (a) shall include—

9 (1) a 30-year history of the size of the acquisi-
10 tion agency's workforce; and

11 (2) a description of measures the agency is im-
12 plementing to address any shortage of acquisition
13 workforce personnel.

14 (c) PUBLIC COMMENT.—In preparing the report re-
15 quired under subsection (a), the head of each executive
16 agency shall solicit feedback regarding the agency's acqui-
17 sition workforce, including through a public comment
18 process.

19 **SEC. 7. USE OF PROCUREMENT ASSISTANCE RESOURCES.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, the Federal Acquisition Regulatory
22 Council shall amend the Federal Acquisition Regulation
23 to require executive agencies to take actions to encourage
24 prospective contractors to utilize contracting assistance re-
25 sources that are offered in their communities. The Federal
26 Acquisition Regulation, as so amended, shall include a re-

1 quirement that the bid solicitation documents for a con-
 2 tract include language encouraging the use of such re-
 3 sources.

4 **SEC. 8. IMPROVING OUTREACH TO SMALL BUSINESS CON-**
 5 **CERNS.**

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

8 “(q) SMALL BUSINESS OUTREACH PROGRAM.—

9 “(1) PROGRAM ESTABLISHED.—The Adminis-
 10 trator and the Administrator of General Services
 11 shall jointly establish an outreach program—

12 “(A) to communicate with small business
 13 concerns regarding specific contracting opportu-
 14 nities with the Federal Government; and

15 “(B) to inform small business concerns
 16 about opportunities to learn about the process
 17 of contracting with the Federal Government.

18 “(2) ANNUAL REPORT TO CONGRESS.—Not
 19 later than 1 year after the date of enactment of this
 20 subsection, and annually thereafter, the Adminis-
 21 trator and the Administrator of General Services
 22 shall jointly submit to Congress a report on the pro-
 23 gram under this subsection that includes the number
 24 of small business concerns that entered into a con-
 25 tract with the Federal Government for the first time

1 during the applicable year as a result of the pro-
2 gram.”.

3 **SEC. 9. GAO REPORT ON FEDERAL CONTRACTS FOR SMALL**
4 **BUSINESS CONCERNS.**

5 (a) STUDY.—

6 (1) IN GENERAL.—The Comptroller General of
7 the United States shall conduct a study of changes
8 in the definition of the term “small business con-
9 cern” and the size standards established under sec-
10 tion 3(a)(2) of the Small Business Act (15 U.S.C.
11 632(a)(2)) during the 10-year period ending on the
12 date of the enactment of this Act.

13 (2) CONTENTS.—The study conducted under
14 paragraph (1) shall, for each change in the defini-
15 tion of the term “small business concern” or the size
16 standards established under section 3(a)(2) of the
17 Small Business Act (15 U.S.C. 632(a)(2))—

18 (A) analyze the size and number of small
19 business concerns that—

20 (i) did not qualify as a small business
21 concern before the change; and

22 (ii) entered into a contract with the
23 Federal Government for the first time
24 after the effective date of the change; and

1 (B) assess whether the ability of small
2 business concerns that qualified as a small busi-
3 ness concern before the change to compete for
4 contracts with the Federal Government was in-
5 hibited by the change.

6 (b) REPORT.—Not later than 180 days after the date
7 of the enactment of this Act, the Comptroller General of
8 the United States shall submit to Congress a report detail-
9 ing the results of the study conducted under subsection
10 (a).

11 **SEC. 10. GAO REPORT ON POTENTIAL BARRIERS TO ENTRY**
12 **IN FEDERAL CONTRACTING.**

13 (a) COVERED AGENCY.—In this section, the term
14 “covered agency” means—

- 15 (1) the General Services Administration;
- 16 (2) the Army Corps of Engineers; and
- 17 (3) the Department of Homeland Security.

18 (b) STUDY.—The Comptroller General of the United
19 States shall conduct a study examining the degree to
20 which covered agencies have entered into contracts since
21 January 1, 2004, with contractors that have previous ex-
22 perience performing Federal contracts.

23 (c) REPORT.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the date of the enactment of this Act, the

1 Comptroller General shall submit to Congress a re-
2 port on the study conducted under subsection (b).

3 (2) CONTENT.—The report required under
4 paragraph (1) shall include the following:

5 (A) A description of the frequency with
6 which covered agencies enter into contracts with
7 contractors that have previous experience per-
8 forming Federal contracts.

9 (B) An assessment, by year, from 2004
10 through 2009, of whether the number of repeat
11 contractors has increased or decreased in pro-
12 portion to the number of contractors awarded
13 Federal contracts.

14 (3) CONTRACTS COVERED.—The report re-
15 quired under paragraph (1) shall include informa-
16 tion on the awarding of contracts using full and
17 open competition procedures and the awarding of
18 sole source contracts.

19 **SEC. 11. GAO REPORT ON AWARDING OF FEDERAL CON-**
20 **TRACTS.**

21 (a) STUDY.—The Comptroller General of the United
22 States shall conduct a study on the size and experience
23 of contractors awarded contracts by the General Services
24 Administration, the Army Corps of Engineers, and the
25 Department of Homeland Security.

1 (b) REPORT.—

2 (1) IN GENERAL.—Not later than 180 days
3 after the date of the enactment of this Act, the
4 Comptroller General shall submit to Congress a re-
5 port on the study conducted under subsection (a).

6 (2) CONTENT.—The report required under
7 paragraph (1) shall include, with respect to con-
8 tracts entered into by the General Services Adminis-
9 tration, the Army Corps of Engineers, and the De-
10 partment of Homeland Security on or after January
11 1, 2000, the following information:

12 (A) The number of contractors with fewer
13 than 50 employees.

14 (B) The number of contractors with fewer
15 than 10 employees.

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