

CLARITY ON SMALL BUSINESS PARTICIPATION IN
CATEGORY MANAGEMENT ACT OF 2018

SEPTEMBER 12, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. CHABOT, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 6382]

The Committee on Small Business, to whom was referred the bill (H.R. 6382) to amend the Small Business Act to require the Administrator of the Small Business Administration to report certain information to the Congress and to the President, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. Purpose and Bill Summary	2
II. Need for Legislation	2
III. Hearings	7
IV. Committee Consideration	7
V. Committee Votes	7
VI. Section-by-Section of H.R. 6382	9
VII. Congressional Budget Office Cost Estimate	9
VIII. Unfunded Mandates	9
IX. New Budget Authority, Entitlement Authority, and Tax Expenditures	9
X. Oversight Findings	9
XI. Statement of Constitutional Authority	10
XII. Congressional Accountability Act	10
XIII. Federal Advisory Committee Act Statement	10
XIV. Statement of No Earmarks	10
XV. Statement of Duplication of Federal Programs	10
XVI. Disclosure of Directed Rule Makings	10
XVII. Performance Goals and Objectives	10
XVIII. Changes in Existing Law, Made by the Bill, As Reported	10

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Clarity on Small Business Participation in Category Management Act of 2018”.

SEC. 2. REPORTING.

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

“(4) BEST IN CLASS SMALL BUSINESS PARTICIPATION REPORTING.—

“(A) ADDENDUM.—The Administrator, in addition to the requirements under paragraph (2), shall include in the report required by such paragraph, for each best in class designation—

“(i) the total amount of spending government wide in such designation;

“(ii) the number of small business concerns awarded contracts and the dollar amount of contracts within such category awarded to each of the following—

“(I) HUBZone small business concerns;

“(II) small business concerns owned and controlled by women;

“(III) small business concerns owned and controlled by service-disabled veterans; and

“(IV) socially and economically disadvantaged small business concerns.

“(B) BEST IN CLASS.—The term ‘best in class’ has the meaning given to it by the Director of the Office of Management and Budget.

“(C) EFFECTIVE DATE.—The Administrator shall be required to report on the information described by subparagraph (A) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.”.

I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 6382, the “Clarity on Small Business Participation in Category Management Act of 2018,” is to allow Congress to obtain critical information regarding the participation of small businesses in specially-designated multiple award contracts known as “best-in-class” contracts.

H.R. 6382 requires the Small Business Administration (SBA) to report federal spending made through designated “best-in-class” vehicles, and to report on the dollars awarded through these vehicles to small businesses. Additionally, the bill requires the SBA to report the dollar amount of contracts awarded to HUBZone, women-owned, service-disabled veteran-owned, and socially and economically disadvantaged (also known as 8(a)) small businesses. The bill becomes effective on the date in which this information becomes available on the appropriate government run procurement tracking system.

II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 6382 was introduced by Rep. Alma Adams (D–NC) and Chairman Steve Chabot (R–OH) on July 16, 2018. Background on each of the bill’s provisions is provided below, along with an explanation of the need for legislation.

A. CATEGORY MANAGEMENT—A HISTORICAL PERSPECTIVE

The United States federal government is the single largest buyer in the world, spending over \$300 billion on goods and services each year.¹ Historically, the majority of common federal agency needs were acquired in a disaggregated manner, creating duplicative con-

¹THE WHITE HOUSE, PRESIDENT’S MANAGEMENT AGENDA 36 (2018), *available at* <https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Presidents-Management-Agenda.pdf>.

tracts with different requirements and prices.² This fragmented purchasing approach resulted in inefficiencies that the Office of Management and Budget (OMB) has sought to mitigate for many years³ through government-wide initiatives such as the Federal Strategic Sourcing Initiative (FSSI) and Category Management (CM). These procurement approaches attempted to eliminate redundancies, increase efficiency, and deliver value and savings to the taxpayer. Today, the Office of Federal Procurement Policy's (OFPP) primary goal through CM is to simplify federal contracting by "leveraging common contracts and best practices to drive savings and maximize efficiencies."⁴ While the goal is noble, the federal government has struggled in the past to reconcile implementing these initiatives while also maintaining the protections afforded to small businesses under the Small Business Act.

a. Contract bundling and consolidation

Several executive branch initiatives have promoted the use of contract bundling and consolidation in past years through initiatives such as FSSI and CM.⁵ As previously examined by this Committee,⁶ unjustified contract bundling⁷ and consolidation⁸ remain among the greatest challenges for small businesses wishing to compete in the federal marketplace.⁹ Contract bundling or consolidation occurs when several separate, smaller contracts are combined into one unnecessarily large contract, often with numerous and complex contract requirements.¹⁰ While in some cases the benefits of bundling and consolidation justify this procurement strategy, in others it simply limits competition to the detriment of small firms. This results in a decline in the number of small businesses choosing to do business with the federal government. Thus, contract bundling is a key issue for the health of the industrial base.

² Agencies have paid different prices for the same item, sometimes at as much as a 300% difference. Michelle E. Litteken, *Category Management 101: What Every Contractor Needs to Know*, PILLIERO MAZZA (June 28, 2016), <http://www.pilieromazza.com/blog/category-management-101-what-every-contractor-needs-to-know>.

³ Category Management, 81 Fed. Reg. 69,860 (Oct. 7, 2016).

⁴ *Supra* note 1.

⁵ For a historical look at FSSI and category management, please refer to: *Contracting and the Industrial Base II: Bundling, Goaling, and the Office of Hearings and Appeals: Hearing Before the Subcomm. on Contracting and Workforce*, 114th Cong. 7–17 (2015).

⁶ The Committee has a long history of oversight with respect to contract bundling. Throughout several Congresses, the Committee has held a number of hearings on contract bundling, submitted letters objecting to various procurement strategies that bundle contracts, and met with procurement officials to express concerns over these contracting strategies and how they may interfere with objectives to expand procurement opportunities for small businesses. Several legislative efforts have been undertaken to pursue common sense reforms on bundling and consolidation.

⁷ The Small Business Act (the Act) defines contract bundling as "consolidating 2 or more procurement requirements for goods or services previously provided or performed 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." 15 U.S.C. 632(o)(2).

⁸ A consolidated contract is one that satisfies "2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost" of the new contract. 15 U.S.C. 657q(a)(2). The key distinction between contract bundling and contract consolidation is that consolidation does not require a finding that a contract will not be suitable for award to small business. Therefore, a contract may be consolidated but not bundled, but all bundled contracts are consolidated.

⁹ *Supra* note 5.

¹⁰ Contract bundling and consolidation, although used in tandem throughout this memorandum, are different. For an analysis of the difference between bundling and consolidation, please refer to: *Bungling Bundling: How Contract Bundling and Consolidation Remain Challenges to Small Business Success: Hearing Before the Subcomm. on Contracting and Workforce*, 113th Cong. (2013).

b. A brief history of category management

The transition from strategic sourcing to category management as a more holistic approach to procurement began in 2014 when the OFPP announced the intention to begin “buying as one through category management.”¹¹ The CM approach would allow procurement personnel to pay more attention to the data behind how they spend and what they buy. However, the lack of mechanisms for new entrants into the market and limiting the number of companies able to compete still retained the risks inherent in bundling and consolidation.

The 2016 OMB Circular,¹² published at the end of the previous Administration, proposed to “establish a government-wide approach to acquiring common goods and services” and “promote, to the fullest extent possible, maximum adoption of category management principles, strategies, and requirements.”¹³ Additionally, the Circular prescribed the designation and use of Best-In-Class (BIC) vehicles.¹⁴ BIC is a designation by OMB that a particular contract vehicle is a “preferred government-wide solution”¹⁵ and are “recommended—and in some cases required—for use.”¹⁶ The Circular does acknowledge that increasing small business participation in the CM initiative is a priority, promising to monitor small business participation and meet or exceed baseline small business use under the current procurement framework.¹⁷ However, due to the nature of CM as a procurement strategy, ensuring the health of the small business industrial base would be difficult to achieve, as will be described later in this memorandum.

B. CATEGORY MANAGEMENT IN THE PRESENT

The President’s Management Agenda (PMA) published on March 20, 2018, specifically identifies CM as the preferred approach to “leverage common contracts and best practices to drive savings and efficiencies.”¹⁸ The strategies outlined by the PMA CM solution identify four key actions, including the “establishment of annual goals to leverage common contract solutions while meeting small business and other statutory socio-economic goals.”¹⁹ The current approach utilizes a tiered, “spend under management” (SUM) approach that includes three tiers of spending, organized from tier 0 (one-to-one contracts categorized as unaligned spend) up to tier 3, or “best-in-class” solutions (government-wide multiple-award contracts meeting OMB’s strict best-in-class criteria).

¹¹ OFPP, TRANSFORMING THE MARKETPLACE: SIMPLIFYING FEDERAL PROCUREMENT TO IMPROVE PERFORMANCE, DRIVE INNOVATION AND INCREASE SAVINGS 2 (Dec. 4, 2014), *available at* <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>.

¹² *Supra* note 3.

¹³ *Supra* note 3.

¹⁴ *Supra* note 3.

¹⁵ According to the GSA, BIC “allows acquisition experts to take advantage of pre-vetted, government-wide solutions; supports a government-wide migration to solutions that are mature and market-proven; assists in the optimization of spend, within the government-wide category management framework; and increase the transactional data *available* for agency level and government-wide analysis of buying behavior.” GSA, BEST-IN-CLASS, *available at* <https://www.gsa.gov/acquisition/category-management/bestinclass>.

¹⁶ GSA, GOVERNMENT-WIDE CATEGORY MANAGEMENT: BEST-IN-CLASS & SPEND UNDER MANAGEMENT, *available at* https://www.gsa.gov/cdnstatic/BIC_%26_SUM_One-pager_252018.pdf.

¹⁷ *Id.*

¹⁸ *Supra* note 1.

¹⁹ *Supra* note 1.

Targets for FY18 as established by the President’s Management Council directed agencies to “(i) decrease their unaligned spend [Tier 0] by 20 percent and (ii) increase the use of BICs to 35 percent of spend [move spend from Tiers 1 & 2 up to Tier 3] that could suitably be made through those vehicles.”²⁰ There is no indication at this time whether these targets will grow in later years, further decreasing Tier 0 spend while pushing a significant portion of contracting activity to Tier 3; however, it remains a possibility.

Furthermore, the federal government currently applies category management principles to 42 percent of its good and services spending through the use of common contracts (MACs and GWACs at tiers 1–3).²¹ The goal, by fiscal year 2020, is to increase this amount to 70 percent,²² which would mean that the vast majority of federal spend would be managed using CM principles.

C. POTENTIAL IMPLICATIONS FOR SMALL BUSINESS AND THE SHRINKING INDUSTRIAL BASE

The industrial base has been trending downward. Even though the federal government has met its small business goal for several consecutive years, some research indicates that contract consolidation efforts by the federal government contributed to a quarter of small prime contractors disappearing from the federal marketplace since 2010, even while the total dollar amount awarded to small businesses remained level.²³ This data implies that the government’s focus on total contract dollars going to small businesses may be misguided; attention should also be paid to the number of businesses in the marketplace.

a. Potential impact of targeted reductions in tier 0 spend

There is a perception among the small business community that as the federal government prioritizes streamlining acquisitions to achieve price reductions, the number of solicitations appropriate for small businesses continues to shrink.²⁴ OMB is promoting spending at the higher tiers, disincentivizing spending at Tier 0, which is where many one-on-one small business contracts reside (i.e., through set-asides and contracts below the simplified acquisition threshold); thus, these targets may result in a decline in opportunities and contract dollars for small firms. In addition to the 20 percent target reduction in unaligned spend (Tier 0), another target set by the Administration is a 13 percent reduction of contracts by 2020 out of the 425,000 contracts that are within Tier 0.²⁵ While there is no confirmation that OFPP is moving to further increase these targets in future years, the current strategy appears to encourage overall reductions in Tier 0 spending and thus, small business contracts.

²⁰ OFFICE OF FEDERAL PROCUREMENT POLICY, HARMONIZING CATEGORY MANAGEMENT & SMALL BUSINESS GOALS 9 (May 24, 2018).

²¹ *Supra* note 1, at 37.

²² *Supra* note 1, at 37.

²³ Jason Miller, *Number of Small Business Prime Contractors Down by 25 Percent Since 2010*, FED. NEWS RADIO (Oct. 16, 2017), <https://federalnewsradio.com/reporters-notebook-jason-miller/2017/10/number-of-small-business-prime-contractors-down-by-25-percent-since-2010/>.

²⁴ *Supra* note 10, (statement of Juanita H. Beauford, President, Assoc. of Procurement Technical Assistance Centers).

²⁵ *Supra* note 35.

b. Potential impact of increasing use of Tier 3 BICs to 35 percent

The use of the GSA Schedules and certain GWACs are an attractive option for small businesses as these contract vehicles have made increasingly diligent efforts to include small businesses in their portfolio.²⁶ Currently, there are thousands of MACs and GWACs in the federal marketplace²⁷ and only a handful of BICs (in FY17 there were 26 BICs²⁸). While there may be an excess of MACs and GWACs, the targeted 35 percent increase in Tier 3 FY18 spending scales back the use of huge numbers of non-BIC MACs and GWACs, which will have a significant impact on the federal contracting market, particularly for those that were not “lucky” enough to have won a spot on a BIC.²⁹

Therefore, not only does it matter if a small business wins a spot on a MAC or GWAC; there is mounting pressure to win spots on the *right* contract, Tier 3 BICs. Particularly with the target 35 percent increase in Tier 3 spending, GWACs and MACs at lower tiers could become less attractive options for contracting officers striving to meet that 35 percent goal. Unfortunately, the implication is that for small businesses that have already spent the time and resources competing for positions on GWACs and MACs at lower tiers, their investment has become less valuable.

D. SMALL BUSINESS INVOLVEMENT IN CATEGORY MANAGEMENT

The President’s Management Agenda requires agencies to: 1) continue to meet or exceed their small business goals; and 2) meet their CM targets.³⁰ Similarly to the way in which SBA negotiates specific small business goals with each agency individually, OFPP intends to tailor CM solutions to suit each individual agency based on their baseline contracting activities and needs, however, they are still expected to bring their spend under management.³¹ While these are positive steps recognizing the importance of small businesses, Office of Small and Disadvantaged Business Utilization (OSDBU) directors have raised concerns whether category management and small business as a socioeconomic policy can successfully coexist. Furthermore, OFPP’s CM strategy essentially requires agencies to spend target amounts through specific vehicles. This may minimize agencies’ flexibility in using the best procurements suitable for their particular needs, which may impede agencies from meeting their missions.

Even though SBA and OSDBUs are involved in CM implementation, there is still significant concern among the small business community that these policies will significantly reduce the small business contracting workforce. H.R. 6382 takes an important first step, requiring the collection of critical data which will be used as the basis to determine if CM will have a negative impact on the industrial base.

²⁶ Aaron Boyd, *OMB Memo Ushers Major Shift in Federal Procurement*, FED. TIMES (Oct. 20, 2015), <https://www.federaltimes.com/acquisition/2015/10/20/omb-memo-ushers-major-shift-in-federal-procurement/>.

²⁷ *Supra* note 40.

²⁸ *Supra* note 30, at 10.

²⁹ *Supra* note 42.

³⁰ *Supra* note 30, at 8.

³¹ *Supra* note 30, at 12.

III. HEARINGS

In the 115th Congress, the Committee held a hearing examining the issues covered in H.R. 6382. On June 13, 2018, the Committee on Small Business met for a hearing titled “The Impact of Category Management on the Small Business Industrial Base.” This hearing continued the Committee’s longstanding oversight over the use of contract bundling and consolidation in the federal procurement system by scrutinizing the Administration’s approach to utilizing category management principles. These category management principles were examined in the context of past Executive Branch initiatives and discussed the impact the current approach may have on small businesses and the industrial base. Witnesses included subject matter experts representing the HUBZone Contractors National Council, Professional Services Council, National Defense Industrial Association, and the U.S. Women’s Chamber of Commerce.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 18, 2018 and ordered H.R. 6382 favorably reported to the House. During the markup, one amendment was offered.

Amendment Number One was offered by Rep. Stephanie Murphy of Florida. This amendment clarified that the bill becomes effective when the information required to be reported becomes available on a federal procurement tracking system. The amendment passed by voice vote at 11:57 am.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted by voice vote to favorably report H.R. 6382 to the House at 11:58 am.

**COMMITTEE ON SMALL BUSINESS
TALLY SHEET**

DATE: 7/18
 BILL NUMBER: 6382
 ROLL CALL:
 AMENDMENT NUMBER:
 VOTE: (AYE) (NO)

QUORUM:
 PRESENT:

11:58 VV

MEMBER	AYE	NO	NOT VOTING
Mr. Chabot, Chairman			
Mr. King			
Mr. Luetkemeyer			
Mr. Brat			
Ms. Radewagen			
Mr. Knight			
Mr. Kelly			
Mr. Blum			
Mr. Comer			
Ms. González-Colón			
Mr. Fitzpatrick			
Dr. Marshall			
Mr. Norman			
Mr. Curtis			
Ms. Velázquez, Ranking Member			
Mr. Evans			
Ms. Murphy			
Mr. Lawson, Jr.			
Ms. Clarke			
Ms. Chu			
Ms. Adams			
Mr. Espaillat			
Mr. Schneider			
VACANT			
TOTALS			

On this vote there were _____ ayes and _____ nos.

VI. SECTION-BY-SECTION ANALYSIS OF H.R. 6382

Section 1. Short title

This section designates the short title as the “Clarity on Small Business Participation in Category Management Act of 2018”.

Section 2. Reporting

This section amends Section 15(h) of the Small Business pertaining to the small business goaling report by adding a new section requiring the Small Business Administration report on the total amount of spending government wide through contract vehicles designated as “best-in-class,” as defined by the Office of Management and Budget, including spending broken down by each of the socioeconomic categories: HUBZone small business concerns, women-owned small business concerns, service-disabled veteran-owned small business concerns, and socially and economically disadvantaged (otherwise known as 8(a)) small business concerns. This reporting requirement becomes effective when the information becomes available on a federal procurement tracking system.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At the time H.R. 6382 was reported to the House, the Congressional Budget Office had not provided a cost estimate.

VIII. UNFUNDED MANDATES

H.R. 6382 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Public Law No. 104-4, and would impose no costs on state, local, or tribal governments.

IX. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 6382 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

X. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 6382 are incorporated into the descriptive portions of this report.

XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1.

XII CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 6382 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Public Law No. 104–1.

XIII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 6382 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App.2.

XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 6382 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in subsections (d), (e), or (f) of clause 9 of rule XXI of the Rules of the House.

XV. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3 of rule XIII of the Rules of the House, no provision of H.R. 6382 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the United States Government Accountability Office pursuant to § 21 of Pub. L. No. 111–139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

XVI. DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to clause 3 of the rule XIII of the Rules of the House, H.R. 6382 does not direct any rulemaking.

XVII. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 6382 requires the SBA to report on small business dollars spent through multiple award contract vehicles specially designated as “best-in-class” or otherwise by the Office of Management and Budget. The objective is collect critical information regarding the participation of small businesses in these contract vehicles as these contract vehicles become increasingly utilized among federal agencies.

XVIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause (E) of rule XIII of the Rules of the House, changes in existing law made by the bill, as reported, are shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 15.

(a) SMALL BUSINESS PROCUREMENTS.—

(1) IN GENERAL.—For purposes of this Act, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

(A) maintaining or mobilizing the full productive capacity of the United States;

(B) war or national defense programs; or

(C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) INDUSTRY CATEGORY DEFINED.—

(A) IN GENERAL.—In this subsection, the term “industry category” means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

(i) due to special capital equipment needs;

(ii) due to special labor requirements;

(iii) due to special geographic requirements, except as provided in subparagraph (B);

(iv) due to unique Federal buying patterns or requirements; or

(v) to recognize a new industry.

(B) EXCEPTION FOR GEOGRAPHIC REQUIREMENTS.—The Administrator may not further segment an industry category based on geographic requirements unless—

(i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;

(ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and

(iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

(3) DETERMINATIONS WITH RESPECT TO AWARDS OR CONTRACTS.—Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) INCREASING PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—

(A) DESCRIPTION OF COVERED PROPOSED PROCUREMENTS.—The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

(i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;

(ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or

(iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) NOTICE TO PROCUREMENT CENTER REPRESENTATIVES.—With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (1)) along with a statement explaining—

(i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;

(iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;

(iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or

(v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) ALTERNATIVES TO INCREASE PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods

for increasing prime contracting opportunities for small business concerns.

(D) FAILURE TO AGREE ON AN ALTERNATIVE PROCUREMENT METHOD.—If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) CONTRACTS FOR SALE OF GOVERNMENT PROPERTY.—With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) SALE OF ELECTRICAL POWER OR OTHER PROPERTY.—Nothing in this subsection shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Federal Government.

(7) COSTS EXCEEDING FAIR MARKET PRICE.—A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.

(b) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694(b)), the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c)(1) As used in this subsection:

(A) The term “Committee” means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled “An Act to create a Committee on Purchases of Blind-made Products, and for other purposes”, approved June 25, 1938 (41 U.S.C. 46).

(B) The term “public or private organization for the handicapped” has the same meaning given such term in section 3(e).

(C) The term “handicapped individual” has the same meaning given such term in section 3(f).

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled “An Act to create a Committee on Purchases of Blind-made Products, and for other purposes”, approved June 25, 1938 (41 U.S.C. 47).

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe

economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—

(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) MARKET RESEARCH.—

(A) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) FACTORS.—For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- (i) Cost savings.
- (ii) Quality improvements.
- (iii) Reduction in acquisition cycle times.
- (iv) Better terms and conditions.
- (v) Any other benefits.

(C) REDUCTION OF COSTS NOT DETERMINATIVE.—The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include the following information:

(A) The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.

(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

(C) An assessment of—

- (i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

(ii) the specific actions designed to maximize participation of small business concerns as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4) CONTRACT TEAMING.—

(A) IN GENERAL.—In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors or a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) EVALUATION OF OFFERS.—The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

(i) TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(C) STATUS AS A SMALL BUSINESS CONCERN.—Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern for any other purpose.

(f) CONTRACTING PREFERENCE FOR SMALL BUSINESS CONCERNS IN A MAJOR DISASTER AREA.—

(1) DEFINITION.—In this subsection, the term “disaster area” means the area for which the President has declared a major disaster, during the period of the declaration.

(2) CONTRACTING PREFERENCE.—An agency shall provide a contracting preference for a small business concern located in a disaster area if the small business concern will perform the work required under the contract in the disaster area.

(3) CREDIT FOR MEETING CONTRACTING GOALS.—If an agency awards a contract to a small business concern under the circumstances described in paragraph (2), the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A).

(g) (1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. In meeting this goal, the Government shall ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(B) ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(D) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(E) The head of each Federal agency, in attempting to attain expanded participation under subparagraph (D), shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(h) REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

(1) AGENCY REPORTS.—At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year;

(C) any justifications for a failure to achieve such goals; and

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

(A) a copy of each report submitted to the Administrator under paragraph (1);

(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

(i) small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through unrestricted competition;

(V) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VI) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(ii) small business concerns owned and controlled by service-disabled veterans—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans;

(V) through unrestricted competition;

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by service-disabled veterans for purposes of the initial contract; and

(VII) that were awarded using a procurement method that restricted competition to qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iii) qualified HUBZone small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to qualified HUBZone small business concerns;

(V) through unrestricted competition where a price evaluation preference was used;

(VI) through unrestricted competition where a price evaluation preference was not used;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed

to be qualified HUBZone small business concerns for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition;

(VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by socially and economically disadvantaged individuals for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by women, or a subset of any such concerns;

(v) small business concerns owned by an Indian tribe (as such term is defined in section 8(a)(13)) other than an Alaska Native Corporation—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Indian tribe other than an Alaska Native Corporation for purposes of the initial contract;

- (vi) small business concerns owned by a Native Hawaiian Organization—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
 - (V) through unrestricted competition; and
 - (VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by a Native Hawaiian Organization for purposes of the initial contract;
- (vii) small business concerns owned by an Alaska Native Corporation—
 - (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
 - (V) through unrestricted competition; and
 - (VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Alaska Native Corporation for purposes of the initial contract; and
- (viii) small business concerns owned and controlled by women—
 - (I) in the aggregate;
 - (II) through competitions restricted to small business concerns;
 - (III) through competitions restricted using the authority under section 8(m)(2);
 - (IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used;
 - (V) through sole source contracts awarded using the authority under subsection 8(m)(7);
 - (VI) through sole source contracts awarded using the authority under section 8(m)(8);
 - (VII) by industry for contracts described in subclause (III), (IV), (V), or (VI);
 - (VIII) through unrestricted competition;
 - (IX) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by women for purposes of the initial contract; and

(X) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or a subset of any such concerns; and

(F) for the Federal Government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), or otherwise available as provided in paragraph (3).

(3) PROCUREMENT DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—

(i) IN GENERAL.—To assist in the implementation of this section, the Administrator shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(ii) GSA REPORT.—On the date that the Administrator makes available the report required under paragraph (2), the Administrator of the General Services Administration shall submit to the President and Congress, and shall make available on a public website, a report in the same form and manner, and including the same information, as the report required under paragraph (2). The report shall include all procurements made for the period covered by the report and may not exclude any contract awarded.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administrator, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(4) *BEST IN CLASS SMALL BUSINESS PARTICIPATION REPORTING.*—

(A) *ADDENDUM.*—*The Administrator, in addition to the requirements under paragraph (2), shall include in the report required by such paragraph, for each best in class designation—*

(i) the total amount of spending government wide in such designation;

(ii) the number of small business concerns awarded contracts and the dollar amount of contracts within such category awarded to each of the following—

(I) HUBZone small business concerns;

(II) small business concerns owned and controlled by women;

(III) small business concerns owned and controlled by service-disabled veterans; and

(IV) socially and economically disadvantaged small business concerns.

(B) *BEST IN CLASS.*—The term “best in class” has the meaning given to it by the Director of the Office of Management and Budget.

(C) *EFFECTIVE DATE.*—The Administrator shall be required to report on the information described by subparagraph (A) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.

(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 8 of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) There is hereby established in each Federal agency having procurement powers an office to be known as the “Office of Small and Disadvantaged Business Utilization”. The management of each such office shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual

whose primary responsibilities were for the functions and duties of section 8, 15, 31, 36, or 44 of this Act. Such officer or employee—

(1) shall be known as the “Director of Small and Disadvantaged Business Utilization” for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5, United States Code), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 44(a) of this Act) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary’s designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 8, 15, 31, 36, and 44 of this Act which relate to such agency;

(5) shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31, United States Code, or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation;

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8, 15, 31, 36, and 44 of this Act;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties

and functions relating to sections 8, 15, 31, 36, and 44 of this Act,

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), section 8, 15, 31, or 36 of this Act, or section 2323 of title 10, United States Code, which shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 44 of this Act;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this Act, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection;

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year;

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year; and

(D) any failure of the agency to comply with section 8, 15, 31, or 36;

(17) shall, when notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(A) submit the notice of the small business concern to the contracting officer and, if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition;

(B) inform the advocate for competition of such agency (as established under section 1705 of title 41, United States Code, or section 2318 of title 10, United States Code) of such notice; and

(C) ensure that the small business concern is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if such resources and processes are provided by such agency, the Administration, the Comptroller General, or a procurement technical assistance program established under chapter 142 of title 10, United States Code;

(18) shall review summary data provided by purchase card issuers of purchases made by the agency greater than the micro-purchase threshold (as defined under section 1902 of title 41, United States Code) and less than the simplified acquisition threshold to ensure that the purchases have been made in compliance with the provisions of this Act and have been properly recorded in the Federal Procurement Data System, if the method of payment is a purchase card issued by the Department of Defense pursuant to section 2784 of title 10, United States Code, or by the head of an executive agency pursuant to section 1909 of title 41, United States Code;

(19) shall provide assistance to a small business concern awarded a contract or subcontract under this Act or under title 10 or title 41, United States Code, in finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract; and

(20) shall review all subcontracting plans required by paragraph (4) or (5) of section 8(d) to ensure that the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract to which the plan applies.

This subsection shall not apply to the Administration.

(1) PROCUREMENT CENTER REPRESENTATIVES.—

(1) ASSIGNMENT AND ROLE.—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) ACTIVITIES.—A procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appro-

priate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this Act;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified;

(I) assist small business concerns with finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract; and

(J) carry out any other responsibility assigned by the Administrator.

(3) APPEALS.—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

(5) POSITION REQUIREMENTS.—

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii) have the certification described in subparagraph

(C).

(B) COMPENSATION.—The Administrator shall establish personnel positions for procurement center representatives

assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(C) CERTIFICATION REQUIREMENTS.—

(i) IN GENERAL.—Consistent with the requirements of clause (ii), a procurement center representative shall have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(ii) DELAY OF CERTIFICATION REQUIREMENTS.—

(I) TIMING.—The certification described in clause (i) is not required for any person serving as a procurement center representative until the date that is one calendar year after the date such person is appointed as a procurement center representative.

(II) APPLICATION.—The requirements of subclause (I) shall—

(aa) be included in any initial job posting for the position of a procurement center representative; and

(bb) apply to any person appointed as a procurement center representative after January 3, 2013.

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term “major procurement center” means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) TRAINING.—

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appro-

appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(9) SCOPE OF REVIEW.—The Administrator—

(A) may not limit the scope of review by the procurement center representative for any solicitation of a contract or task order without regard to whether the contract or task order or part of the contract or task order is set aside for small business concerns, whether 1 or more contracts or task order awards are reserved for small business concerns under a multiple award contract, or whether or not the solicitation would result in a bundled or consolidated contract (as defined in subsection (s)) or a bundled or consolidated task order; and

(B) shall, unless the contracting agency requests a review, limit the scope of review by the procurement center representative for any solicitation of a contract or task order if such solicitation is awarded by or for the Department of Defense and—

(i) is conducted pursuant to section 22 of the Arms Export Control Act (22 U.S.C. 2762);

(ii) is a humanitarian operation as defined in section 401(e) of title 10, United States Code;

(iii) is for a contingency operation, as defined in section 101(a)(13) of title 10, United States Code;

(iv) is to be awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or

(v) both the place of award and the place of performance are outside of the United States and its territories.

(m)(1) Each agency subject to the requirements of section 2323 of title 10, United States Code, shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 2323 of title 10, United States Code.

(n) For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(p) ACCESS TO DATA.—

(1) BUNDLED CONTRACT DEFINED.—In this subsection, the term “bundled contract” has the meaning given such term in section 3(o)(1).

(2) DATABASE.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) ANALYSIS.—For each bundled contract that is to be re-competed as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) ANNUAL REPORT ON CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

(B) CONTENTS.—Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

(cc) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q) REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—

(1) TEAMING AND JOINT VENTURE REQUIREMENTS.—

(A) IN GENERAL.—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(B) TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(C) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns for any multiple

award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) REPORTING.—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) MULTIPLE AWARD CONTRACTS.—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services

Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(s) DATA QUALITY IMPROVEMENT PLAN.—

(1) IN GENERAL.—Not later than October 1, 2015, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundled or consolidated contracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41, United States Code).

(2) PLAN REQUIREMENTS.—The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Administrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4);

(B) recommend changes to policies and procedures, including training procedures of relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;

(C) recommend requirements for periodic and statistically valid data verification and validation; and

(D) recommend clear data verification responsibilities.

(3) PLAN SUBMISSION.—The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4) IMPLEMENTATION.—Not later than October 1, 2016, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

(5) CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

(6) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.—The terms “Chief Acquisition Officer” and

“senior procurement executive” have the meanings given such terms in section 44(a) of this Act.

(B) BUNDLED OR CONSOLIDATED CONTRACT.—The term “bundled or consolidated contract” means a bundled contract (as defined in section 3(o)) or a contract resulting from the consolidation of contracting requirements (as defined in section 44(a)(2)).

(t) GAO REPORT ON SMALL BUSINESS ADMINISTRATION PROGRAMS IN PUERTO RICO.—Not later than one year after the date of enactment of this subsection, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the application and utilization of contracting activities of the Administration (including contracting activities relating to HUBZone small business concerns) in Puerto Rico. The report shall also identify any provisions of Federal law that may create an obstacle to the efficient implementation of such contracting activities.

(u) POST-AWARD COMPLIANCE RESOURCES.—The Administrator shall provide to small business development centers and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10, United States Code, and shall make available on the website of the Administration, a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract.

(v) REGULATORY CHANGES AND TRAINING MATERIALS.—Not less than annually, the Administrator shall provide to the Defense Acquisition University (established under section 1746 of title 10, United States Code), the Federal Acquisition Institute (established under section 1201 of title 41, United States Code), the individual responsible for mandatory training and education of the acquisition workforce of each agency (described under section 1703(f)(1)(C) of title 41, United States Code), small business development centers, and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10, United States Code—

(1) a list of all changes made in the prior year to regulations promulgated—

(A) by the Administrator that affect Federal acquisition; and

(B) by the Federal Acquisition Council that implement amendments to this Act; and

(2) any materials the Administrator has developed that explain, train, or assist Federal agencies or departments or small business concerns with compliance with the regulations described in paragraph (1).

* * * * *