

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1873) TO REAUTHORIZE THE PROGRAMS AND ACTIVITIES OF THE SMALL BUSINESS ADMINISTRATION RELATING TO PROCUREMENT, AND FOR OTHER PURPOSES

MAY 8, 2007.—Referred to the House Calendar and ordered to be printed

Mr. CARDOZA, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 383]

The Committee on Rules, having had under consideration House Resolution 383, by a vote of 8 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of the bill (H.R. 1873) to reauthorize the programs and activities of the Small Business Administration relating to procurement, and for other purposes, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Small Business. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Oversight and Government Reform now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except clauses 9 and 10 of rule XXI.

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of Rule XXI are waived. The rule provides one motion to recommit with or without instructions. The rule provides that, notwith-

standing the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI), includes the following: a waiver of Rule XIII, clause 4(a), requiring a three-day layover of the committee report; a waiver of rule XIII, clause 3(c)(4), requiring the inclusion in the report of certain oversight, budget and performance goal information; and a waiver of clause 3(d)(2) of rule XIII, requiring the inclusion of an estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year. The Committee is not aware of any points of order against the committee substitute therefore the waiver of all points of order against the committee amendment in the nature of a substitute is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 176

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. Diaz-Balart.

Summary of motion: To grant an open rule.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 177

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Cuellar (TX) and Chabot (OH), #15, to authorize the Administrator of the Office of Federal Procurement Policy within the Office of Management and Budget to decide bundling matters. Where the SBA Administrator and the contracting agency fail to agree on mitigation strategies for a particular bundled contract, the Administrator of OFPP will have ten days to issue his decision.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 178

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Chabot (OH), #5, to strike section 211 relating to limiting the value of sole source contracts awarded to certain entities.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 179

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Price, Tom (GA), #6, to require that spending in this legislation be offset by reductions in spending elsewhere.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 180

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Sessions (TX), #4, to strike section 303 relating to recertification of size standards.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 181

Date: May 8, 2007.

Measure: H.R. 1873.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 8–4.

Vote by Members: McGovern—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Reyes (TX): The amendment would aid small businesses that have been included in the Small Business Subcontracting Plans of prime contractors that obtain federal contracts. (10 minutes)

2. Shuler (NC)/Chabot (OH): The amendment extends small business contracting goals to overseas contracts. (10 minutes)

3. Bean (IL)/Chabot (OH): The amendment would raise the government-wide small business procurement goal from 25 percent to 30 percent. (10 minutes)

4. Sestak (PA)/Chabot (OH): The amendment closes a loophole in the current bill that allows agencies to avoid doing small business impact studies by designating contracts as “transformed”. It also lowers the new dollar threshold established to \$1.5 million to ensure a greater portion of contracts are reviewed for their impact on small business as well as taxpayer savings. (10 minutes)

5. Welch (VT)/Inslee (WA)/Blumenauer (OR): The amendment sets a 5% procurement goal for the Federal government to contract with “green” small businesses. (10 minutes)

6. Wynn (MD): The amendment commissions the Small Business Administration to complete a study on the feasibility and desirability of providing financial incentives to federal prime contractors who meet the goals set forth in their subcontracting plan of utilizing small business concerns owned by economically or socially disadvantaged individuals. (10 minutes)

7. Jackson-Lee (TX): The amendment provides that, whenever the SBA and the contracting procurement agency fail to agree and the Administrator decides to take action to further the interests of a small business concern, the SBA is required to make available on their website any action taken and result achieved by the Administrator. (10 minutes)

8. Jackson-Lee (TX): The amendment requires that, when the SBA and the contracting procurement agency fail to agree and the Administrator submits the matter to the head of the agency for a determination, a copy of the written response to the Administrator be sent to the Committee of the House and Senate that has jurisdiction over the agency concerned, in addition to the Committees on Small Business and Oversight & Government Reform. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE REYES OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 209 and insert the following:

SEC. 209. REVIEW OF SUBCONTRACTING PLANS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the General Services Administration shall, after an opportunity for notice and comment, begin to make modifications, if necessary, to the Electronic Subcontracting Reporting System (ESRS) for the purpose of tracking companies’ compliance with small business subcontracting plans included in successful contract bids. ESRS shall be further developed, if necessary, in such a way that it allows agencies to track whether or not the prime contractor actually subcontracted work out to the subcontracting firms described in the Small Business Subcontracting Plan. Further, ESRS shall be modified, if necessary, so that it facilitates review of a company’s record of compliance with small business subcontracting plans.

(b) **PERIODIC REPORTS.**—Prime contractors shall be required to submit Small Business Subcontracting Plans to ESRS and submit subsequent periodic reports to ESRS describing the extent to which the prime contractor complied with small business subcontracting plans submitted as part of the company’s successful contract proposal. Each such report shall include a specific accounting of compliance with subcontracting goals described in the prime contractor’s Small Business Subcontracting Plans related to Small Disadvantaged Businesses Concerns, Women-Owned Small Business Concerns, Historically Black Colleges and Universities and Minority Institutions, Service-Disabled Veteran-Owned Small Business Concerns, and HUBZone Small Business Concerns. Each such accounting of compliance shall also be included in ESRS.

(c) **INCLUSION IN ESRS.**—The “percentage of the total dollar amount of the contract award” that is paid to small business, as referred to in paragraph (12) of section 8(d) of the Small Business Act (as added by section 206 of this Act) shall also be included in ESRS.

(d) **AVAILABILITY OF ESRS.**—ESRS and the information therein shall be made available to agency officials and Source Selection Evaluation Boards (as referred to in Federal Acquisition Regulations 3.104–1) that are charged with evaluating contract proposals, and, when evaluating contract proposals, agencies shall take into consideration the compliance with small business subcontracting plans of companies competing for Federal contracts, and within one year after the date of the enactment of this Act such consideration shall be reflected in the Federal Acquisition Regulations.

(e) **FURTHER MODIFICATIONS REQUIRED.**—ESRS shall be modified in such a way that it can generate comparable reports on individual companies’ compliance records to be used in the contract proposal evaluation processes of agencies.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHULER OF NORTH CAROLINA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

After section 201 insert the following (and redesignate succeeding sections accordingly):

SEC. 202. INCLUDE OVERSEAS CONTRACTS IN SMALL BUSINESS GOAL.

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

“(3) The procurement goals required by this subsection apply to all procurement contracts, without regard to whether the contract is for work within or outside the United States.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BEAN OF ILLINOIS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 201(a), strike “25 percent” and insert “30 percent”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESTAK OF PENNSYLVANIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 101 and insert the following:

SEC. 101. DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by amending subsection (o) to read as follows:

“(o) **DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.**—For purposes of this Act:

“(1) **BUNDLED CONTRACT.**—

“(A) **IN GENERAL.**—The term ‘bundled contract’ means a contract or order that is entered into to meet procurement requirements that are consolidated in a bundling of contract requirements, without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.

“(B) **EXCEPTIONS.**—The term does not include—

“(i) a contract or order with an aggregate dollar value below the dollar threshold specified in paragraph (4); or

“(ii) a contract or order that is entered into to meet procurement requirements, all of which are exempted requirements under paragraph (5).

“(2) **BUNDLING OF CONTRACT REQUIREMENTS.**—

“(A) **IN GENERAL.**—The term ‘bundling of contract requirements’ means the use of any bundling methodology to satisfy 2 or more procurement requirements for goods or services previously supplied or performed under separate smaller contracts or orders, or to satisfy 2 or more procurement requirements for construction services of a type historically performed under separate smaller contracts or orders, that is likely to be unsuitable for award to a small business concern due to—

“(i) the diversity, size, or specialized nature of the elements of the performance specified;

“(ii) the aggregate dollar value of the anticipated award;

“(iii) the geographical dispersion of the contract or order performance sites; or

“(iv) any combination of the factors described in clauses (i), (ii), and (iii).

“(B) **INCLUSION OF NEW FEATURES OR FUNCTIONS.**—A combination of contract requirements that would meet the definition of a bundling of contract requirements but for the addition of a procurement requirement with at least one new good or service shall be considered to be a bundling of contract requirements unless the new features or functions substantially transform the goods or services and for which measurably substantial benefits to the government in terms of quality or price are identified.

“(C) **EXCEPTIONS.**—The term does not include—

“(i) the use of a bundling methodology for an anticipated award with an aggregate dollar value below the dollar threshold specified in paragraph (5); or

“(ii) the use of a bundling methodology to meet procurement requirements, all of which are exempted requirements under paragraph (6).

“(3) BUNDLING METHODOLOGY.—The term ‘bundling methodology’ means—

“(A) a solicitation to obtain offers for a single contract or order, or a multiple award contract or order; or

“(B) a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract or order.

“(4) SEPARATE SMALLER CONTRACT.—The term ‘separate smaller contract’, with respect to bundling of contract requirements, means a contract or order that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

“(5) DOLLAR THRESHOLD.—The term ‘dollar threshold’ means \$65,000,000, if solely for construction services.

“(6) EXEMPTED REQUIREMENTS.—The term ‘exempted requirement’ means a procurement requirement solely for items that are not commercial items (as the term ‘commercial item’ is defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

“(7) PROCUREMENT REQUIREMENT.—The term ‘procurement requirement’ means a determination by an agency that a specified good or service is needed to satisfy the mission of the agency.”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WELCH OF VERMONT, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title II, insert the following:

SEC. 212. SMALL BUSINESS GOALS FOR GREEN SMALL BUSINESS CONCERNS.

(a) IN GENERAL.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended—

(1) in paragraph (1)—

(A) by striking “and small business concerns owned and controlled by women” both places such term appears and inserting “small business concerns owned and controlled by women, and green small business concerns”; and

(B) by inserting before “Notwithstanding the Government-wide goal” the following: “The Government-wide goal for participation by green small business concerns shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.”; and

(2) in paragraph (2)—

(A) by striking “and by small business concerns owned and controlled by women” both places such term appears and inserting “by small business concerns owned and controlled by women, and by green small business concerns”; and

(B) by striking “and small business concerns owned and controlled by women” and inserting “small business concerns owned and controlled by women, and green small business concerns”.

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3 of that Act (15 U.S.C. 632) is amended by adding at the end the following:

“(s) DEFINITIONS RELATING TO GREEN SMALL BUSINESS CONCERNS.—In this Act, the term ‘green small business concern’ means a small business concern that carries out its activities in an environmentally sound manner. The Administrator shall, in consultation with the Environmental Protection Agency, the General Services Administration, and other appropriate agencies, specify detailed definitions or standards by which a small business concern may be determined to be a green small business concern for the purposes of this Act.”.

(2) POLICY.—Section 8(d) of that Act (15 U.S.C. 637(d)) is amended—

(A) in paragraph (1) (in both places such term appears), paragraph (3)(A) (in both places such term appears), paragraph (4)(D), paragraph (6)(A), paragraph (6)(C), paragraph (6)(F), and paragraph (10)(B) by striking “and small business concerns owned and controlled by women” and inserting “small business concerns owned and controlled by women, and green small business concerns”;

(B) in paragraph (3)(F) by striking “or a small business concern owned and controlled by women” and inserting “a small business concern owned and controlled by women, or a green small business concern”; and

(C) in paragraph (4)(E) by striking “and for small business concerns owned and controlled by women” and inserting “for small business concerns owned and controlled by women, and for green small business concerns”.

(3) REPORTS ON GOALS.—Section 15(h) of that Act (15 U.S.C. 644(h)) is amended, in each of paragraphs (1), (2)(A), (2)(D), and (2)(E) by striking “and small business concerns owned and controlled by women” and inserting “small business concerns owned and controlled by women, and green small business concerns”.

(4) PENALTIES.—Section 16 of that Act (15 U.S.C. 645) is amended in each of subsections (d)(1) and (e) by striking “or a ‘small business concern owned and controlled by women’” and inserting “a ‘small business concern owned and controlled by women’, or a ‘green small business concern’”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WYNN OF MARYLAND, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title II, add the following:

SEC. 2 ____ . STUDY ON PROVIDING FINANCIAL INCENTIVES TO CONTRACTORS THAT MEET MINORITY AND DISADVANTAGED BUSINESS ENTERPRISE GOALS.

The Administrator of the Small Business Administration shall carry out a study on the feasibility and desirability of providing financial incentives to contractors operating under contracts from a federal agency that achieve the percentage goals set forth in said contracts’ subcontracting plans for the utilization of small business concerns owned and controlled by socially and economically disadvantaged individuals. The Administrator shall submit to Congress a report on the results of the study, together with any find-

ings, conclusions, and recommendations that the Administrator considers appropriate.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 103, strike “concern.” and insert “concern, and shall make available to the public on the website of the Administration the action taken and the result achieved.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 104, strike “Senate.” and insert “Senate, and any other committee of the House and Senate that has jurisdiction over the agency concerned.”.