

## MEMORANDUM TO THE OSDBU COUNCIL

DATE: July 16, 2003

FROM: Arthuretta H. Martin, Chair Legislative Committee

SUBJECT: July 2003 Legislative Report

The following is the status of proposed legislation before congress affecting small businesses doing business with the Federal Government in the 108<sup>th</sup> Congress. They include bills that directly name small businesses as well as bills that affect Federal Procurement Policy. This report is submitted for information purposes only. Subsequent reports will only include activity that occurred after this report. Any recommendations to improving the report should be submitted to me at [Arthuretta.martin@hhs.gov](mailto:Arthuretta.martin@hhs.gov).

### **H.R.1772**

**Title:** To improve small business advocacy, and for other purposes.

**Sponsor:** Rep Akin, W. Todd [MO-2] (introduced 4/11/2003) **Cosponsors:** 1

**Latest Major Action:** 6/25/2003 Referred to Senate committee. Status: Received in the Senate and Read twice and referred to the Committee on Small Business and Entrepreneurship.

### **SUMMARY AS OF:**

4/11/2003--Introduced.

Small Business Advocacy Improvement Act of 2003 - Requires appointment to the position of Chief Counsel of the Office of Advocacy of the Small Business Administration (SBA) without regard to political affiliation and on the basis of fitness to perform duties. Prohibits appointment of an individual who has served as an SBA officer or employee within the last five years.

Requires the Office to: (1) recommend methods for the delivery of financial assistance to small businesses owned and controlled by socially and economically disadvantaged individuals, women, and veterans; (2) make recommendations and submit relevant reports to the President, the chairmen and ranking members of the congressional small business committees, and the SBA Administrator; (3) maintain economic databases and make such information available to the Administrator and Congress; and (4) coordinate functions with the Small Business and Agriculture Regulatory Enforcement Ombudsman.

Requires the Chief Counsel to submit annually to the Office of Management and Budget and the congressional small business and appropriations committees the Office's appropriation estimate and request. Requires each budget of the United States submitted by the President to include a separate statement of the amount of appropriations requested for the Office of Advocacy.

Authorizes the Chief Counsel to appoint a Principal Deputy Chief Counsel, as well as regional advocates.

Requires the Administrator (currently, the Chief Counsel) to conduct an SBA program for the development of rural small businesses engaged in tourism-related activities.

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### **S.1375**

**Title:** A bill to provide for the reauthorization of programs administered by the Small Business Administration, and for other purposes.

**Sponsor:** Sen Snowe, Olympia J. [ME] (introduced 7/8/2003)    **Cosponsors:** 1

**Latest Major Action:** 7/10/2003 Senate committee/subcommittee actions. Status: Committee on Small Business and Entrepreneurship. Ordered to be reported with amendments favorably.

#### Major Provisions in Federal Contracting

- Broaden definition of Contract Bundling to include consolidations.
- Require PCR's at every major federal center and no less than one PCR in each state.
- Non-payment of subcontractors will become a material breach of contract resulting in non-payment by the Federal Government to the Prime.
- Require a study by GAO to identify industries in which small women-owned businesses are underrepresented in getting federal contracts.
- Bill restates the statutory requirement that OSDBU directors report to the head of the agency.

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### **H.R.2607**

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

**Sponsor:** Rep Case, Ed [HI-2] (introduced 6/26/2003)    **Cosponsors:** 3

**Latest Major Action:** 6/26/2003 Referred to House committee. Status: Referred to the House Committee on Small Business.

**Small Business Federal Contractor Safeguard Act (Introduced in House)**

### **S.633**

**Title:** A bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes.

**Sponsor:** Sen Kerry, John F. [MA] (introduced 3/17/2003)    **Cosponsors:** 4

**Latest Major Action:** 3/17/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Small Business and Entrepreneurship

HR 2607 IH

## H. R. 2607

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

### IN THE HOUSE OF REPRESENTATIVES

June 26, 2003

Mr. CASE (for himself, Mr. SANDERS, Ms. BORDALLO, and Mr. FROST) introduced the following bill; which was referred to the Committee on **Small Business**

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#### A BILL

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the **Small Business** Federal Contractor Safeguard Act'.

#### SEC. 2. CONTRACT CONSOLIDATION.

(a) DEFINITIONS- Section 3(o) of the **Small Business** Act (15 U.S.C. 632(o)) is amended to read as follows:

(o) DEFINITIONS- In this Act the following definitions shall apply:

(1) CONSOLIDATED CONTRACT; CONSOLIDATION- The term 'consolidated contract' or 'consolidation' means a multiple award contract or a contract for goods or services with a Federal agency that--

(A) combines discrete procurement requirements from not less than 2 existing contracts;

(B) adds new, discrete procurement requirements to an existing contract; or

(C) includes 2 or more discrete procurement requirements.

(2) MULTIPLE AWARD CONTRACT- The term 'multiple award contract' means--

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10, United States Code;

(B) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

`(C) any other indefinite delivery or indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.'

(b) PROCUREMENT STRATEGIES- Section 15(e) of the **Small Business** Act (15 U.S.C. 644(e)) is amended to read as follows:

`(e) PROCUREMENT STRATEGIES; CONTRACT CONSOLIDATION-

`(1) IN GENERAL- To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of **small business** concerns as--

- `(A) prime contractors;
- `(B) subcontractors; and
- `(C) suppliers.

`(2) PROCUREMENT STRATEGY REQUIREMENTS WHEN THE VALUE OF A CONSOLIDATED CONTRACT IS GREATER THAN \$2,000,000-

`(A) IN GENERAL- An agency official may not execute a procurement strategy that includes a consolidated contract valued at more than \$2,000,000 unless the proposed procurement strategy-

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- `(i) specifically identifies the benefits anticipated from consolidation;
- `(ii) identifies any alternative contracting approaches that would involve a lesser degree of contract consolidation; and
- `(iii) includes a specific determination that the proposed consolidation is necessary and the anticipated benefits of such consolidation justify its use.

`(B) NECESSARY AND JUSTIFIED- The head of an agency may determine that a procurement strategy under subparagraph (A)(iii) is necessary and justified if the monetary benefits of the procurement strategy, including administrative and personnel costs, substantially exceed the monetary benefits of each of the possible alternative contracting approaches identified under subparagraph (A)(ii).

`(C) ADDITIONAL REQUIREMENTS WHEN THE VALUE OF A CONSOLIDATED CONTRACT IS GREATER THAN \$5,000,000- In addition to meeting the requirements under paragraph (A), a procurement strategy that includes a consolidated contract valued at more than \$5,000,000--

- `(i) shall be supported by current market research that demonstrates that the consolidated contract will result in--
  - `(I) cost savings;
  - `(II) quality improvements;
  - `(III) reduction in acquisition cycle times; or
  - `(IV) better terms and conditions;

`(ii) shall include an assessment of the specific impediments to participation by **small business** concerns as prime contractors that result from contract consolidation;  
` (iii) shall specify actions designed to maximize **small business** participation as subcontractors, including suppliers, at various tiers under the consolidated contract; and  
` (iv) shall not be justified under paragraph (A)(iii) by savings in administrative or personnel costs, unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

`(3) CONTRACT TEAMING-

`(A) IN GENERAL- If the head of an agency solicits offers for a consolidated contract, a **small business** concern may submit an offer that provides for the use of a particular team of subcontractors for the performance of the contract (referred to in this paragraph as `teaming').

`(B) EVALUATION OF OFFER- The head of the agency shall evaluate an offer submitted by a **small business** concern under subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors.

`(C) NO EFFECT ON STATUS AS A **SMALL BUSINESS CONCERN**- If a **small business** concern engages in teaming under subparagraph (A), its status as a **small business** concern shall not be affected for any other purpose.'

(c) CONFORMING AMENDMENTS- The **Small Business** Act (15 U.S.C. 631 et seq.) is amended--

(1) in section 2(j)--

(A) by striking the subsection heading and inserting the following:

`(j) CONTRACT CONSOLIDATION- ' ; and

(B) in paragraph (3), by striking `bundling of contract requirements' and inserting `contract consolidation';

(2) in section 8(d)(4)(G), by striking `a bundled contract' and inserting `a consolidated contract';

(3) in section 15(a)--

(A) by striking `bundling of contract requirements' and inserting `contract consolidation'; and

(B) by striking `the bundled contract' and inserting `the consolidated contract'; and

(4) in section 15(k)(5)--

(A) by striking `significant bundling of contract requirements' and inserting `consolidated contracts valued at more than \$2,000,000'; and

(B) by striking `bundled contract' and inserting `consolidated contract'.

