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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. 1481

To amend the Small Business Act to strengthen the small business industrial base, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CHABOT introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Small Business Act to strengthen the small business industrial base, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Contractors Improve Competition Act of 2015”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GOALING FOR SMALL BUSINESS CONCERNS

- Sec. 101. Amendment to Governmentwide goal for small business participation in procurement contracts.
- Sec. 102. Including subcontracting goals in agency responsibilities.
- Sec. 103. Scorecard program for evaluating Federal agency compliance with small business contracting goals.

TITLE II—BUNDLING AND CONSOLIDATION OF CONTRACTING REQUIREMENTS FOR SMALL BUSINESS CONCERNS

- Sec. 201. Data quality improvement.
- Sec. 202. Notice and justification requirements for bundling or consolidation of contract requirements.

TITLE III—ENHANCING COMPETITION IN CONTRACTING FOR SMALL BUSINESS CONCERNS

- Sec. 301. Joint venturing and teaming.
- Sec. 302. Limitations on reverse auctions.
- Sec. 303. Revision to the nonmanufacturer rule.

TITLE IV—SMALL BUSINESS ACT PERSONNEL AMENDMENTS

- Sec. 401. Establishment of an Office of Hearings and Appeals in the Small Business Administration.
- Sec. 402. Training requirements for Procurement Center Representatives.
- Sec. 403. Training requirements for Business Opportunity Specialists.

TITLE V—SIZE STANDARDS FOR SMALL BUSINESS CONCERNS

- Sec. 501. Petitions for reconsideration of size standards for small business concerns.

1 **TITLE I—GOALING FOR SMALL**
2 **BUSINESS CONCERNS**

3 **SEC. 101. AMENDMENT TO GOVERNMENTWIDE GOAL FOR**
4 **SMALL BUSINESS PARTICIPATION IN PRO-**
5 **CUREMENT CONTRACTS.**

6 Section 15(g)(1)(A)(i) of the Small Business Act (15
7 U.S.C. 644(g)(1)(A)(i) is amended by adding at the end
8 the following: “In meeting this goal, the Government shall
9 ensure the participation of small business concerns from
10 a wide variety of industries and from a broad spectrum
11 of small business concerns within each industry.”

1 **SEC. 102. INCLUDING SUBCONTRACTING GOALS IN AGENCY**
2 **RESPONSIBILITIES.**

3 Section 1633(b) of the National Defense Authoriza-
4 tion Act for Fiscal Year 2013 (Public Law 112–239; 126
5 Stat. 2076; 15 U.S.C. 631 note) is amended by striking
6 “assume responsibility for of the agency’s success in
7 achieving small business contracting goals and percent-
8 ages” and inserting “assume responsibility for the agen-
9 cy’s success in achieving each of the small business prime
10 contracting and subcontracting goals and percentages”.

11 **SEC. 103. SCORECARD PROGRAM FOR EVALUATING FED-**
12 **ERAL AGENCY COMPLIANCE WITH SMALL**
13 **BUSINESS CONTRACTING GOALS.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—Not later than September
16 30, 2016, the Administrator of the Small Business
17 Administration, in consultation with the Federal
18 agencies, shall—

19 (A) develop a methodology for calculating
20 a score to be used to evaluate the compliance of
21 each Federal agency with meeting the goals es-
22 tablished pursuant to section 15(g)(1)(B) of the
23 Small Business Act (15 U.S.C. 644(g)(1)(B));
24 and

25 (B) develop a scorecard based on such
26 methodology.

1 (2) AGENCY ANNUAL GOAL.—In developing the
2 methodology for calculating a score described in
3 paragraph (1)(A), the Administrator shall consider
4 each annual goal established by each Federal agency
5 pursuant to section 15(g)(1)(B) of the Small Busi-
6 ness Act (15 U.S.C. 644(g)(1)(B)).

7 (3) USE OF SCORECARD.—Beginning in fiscal
8 year 2017, the Administrator shall establish and
9 carry out a program to use the scorecard developed
10 under paragraph (1) to evaluate whether each Fed-
11 eral agency is creating the maximum practicable op-
12 portunities for the award of prime contracts and
13 subcontracts to small business concerns, small busi-
14 ness concerns owned and controlled by service-dis-
15 abled veterans, qualified HUBZone small business
16 concerns, small business concerns owned and con-
17 trolled by socially and economically disadvantaged
18 individuals, and small business concerns owned and
19 controlled by women, by assigning a score to each
20 Federal agency. If the Administrator fails to estab-
21 lish and carry out this program before the end of
22 fiscal year 2017, the Administrator may not exercise
23 the authority under section 7(a)(25)(A) until such
24 time as the program is implemented.

1 (4) CONTENTS OF SCORECARD.—The scorecard
2 developed under paragraph (1) shall include, for
3 each Federal agency, the following information:

4 (A) A determination of whether the Fed-
5 eral agency met the each of the prime contract
6 goals established pursuant to section
7 15(g)(1)(B) of the Small Business Act (15
8 U.S.C. 644(g)(1)(B)) with respect to small
9 business concerns, small business concerns
10 owned and controlled by service-disabled vet-
11 erans, qualified HUBZone small business con-
12 cerns, small business concerns owned and con-
13 trolled by socially and economically disadvan-
14 taged individuals, and small business concerns
15 owned and controlled by women.

16 (B) A determination of whether the Fed-
17 eral agency met the each of the subcontract
18 goals established pursuant to section
19 15(g)(1)(B) of the Small Business Act (15
20 U.S.C. 644(g)(1)(B)) with respect to small
21 business concerns, small business concerns
22 owned and controlled by service-disabled vet-
23 erans, qualified HUBZone small business con-
24 cerns, small business concerns owned and con-
25 trolled by socially and economically disadvan-

1 tagged individuals, and small business concerns
2 owned and controlled by women.

3 (C) The number of small business con-
4 cerns, small business concerns owned and con-
5 trolled by service-disabled veterans, qualified
6 HUBZone small business concerns, small busi-
7 ness concerns owned and controlled by socially
8 and economically disadvantaged individuals, and
9 small business concerns owned and controlled
10 by women awarded prime contracts in each
11 North American Industrial Classification Sys-
12 tem code during the fiscal year and a compari-
13 son to the number awarded contracts during
14 the prior fiscal year, if available.

15 (D) The number of small business con-
16 cerns, small business concerns owned and con-
17 trolled by service-disabled veterans, qualified
18 HUBZone small business concerns, small busi-
19 ness concerns owned and controlled by socially
20 and economically disadvantaged individuals, and
21 small business concerns owned and controlled
22 by women awarded subcontracts in each North
23 American Industrial Classification System code
24 during the fiscal year and a comparison to the

1 number awarded contracts during the prior fis-
2 cal year, if available.

3 (E) Any other factors that the Adminis-
4 trator deems important to achieve the max-
5 imum practicable utilization of small business
6 concerns, small business concerns owned and
7 controlled by service-disabled veterans, qualified
8 HUBZone small business concerns, small busi-
9 ness concerns owned and controlled by socially
10 and economically disadvantaged individuals, and
11 small business concerns owned and controlled
12 by women.

13 (5) WEIGHTED FACTORS.—In using the score-
14 card to evaluate and assign a score to a Federal
15 agency, the Administrator shall base—

16 (A) Fifty percent of the score on the dollar
17 value of prime contracts described in paragraph
18 (4)(A); and

19 (B) Fifty percent of the score on the infor-
20 mation provided in subparagraphs (B) through
21 (E) of paragraph (4), weighted in a manner de-
22 termined by the Administrator to encourage the
23 maximum practicable opportunity for the award
24 of prime contracts and subcontracts to small
25 business concerns, small business concerns

1 owned and controlled by service-disabled vet-
2 erans, qualified HUBZone small business con-
3 cerns, small business concerns owned and con-
4 trolled by socially and economically disadvan-
5 taged individuals, and small business concerns
6 owned and controlled by women.

7 (6) PUBLICATION.—The scorecard used by the
8 Administrator under this section shall be submitted
9 to the President and Congress along with the report
10 submitted under section 15(h)(2) of the Small Busi-
11 ness Act (15 U.S.C. 644(h)(2)).

12 (7) REPORT.—After the Administrator submits
13 the scorecard for fiscal year 2018, but not later than
14 March 31, 2019, the Administrator shall report to
15 the Committee on Small Business of the House of
16 Representatives and the Committee on Small Busi-
17 ness and Entrepreneurship of the Senate. Such re-
18 port shall include the following:

19 (A) Any increase in the dollar amount of
20 prime contracts and subcontracts awarded to
21 small business concerns, small business con-
22 cerns owned and controlled by service-disabled
23 veterans, qualified HUBZone small business
24 concerns, small business concerns owned and
25 controlled by socially and economically dis-

1 advantaged individuals, and small business con-
2 cerns owned and controlled by women.

3 (B) Any increase in the dollar amount of
4 prime contracts and subcontracts awarded to
5 small business concerns, small business con-
6 cerns owned and controlled by service-disabled
7 veterans, qualified HUBZone small business
8 concerns, small business concerns owned and
9 controlled by socially and economically dis-
10 advantaged individuals, and small business con-
11 cerns owned and controlled by women in each
12 North American Industrial Classification Sys-
13 tem code.

14 (C) Any increase to the number of small
15 business concerns, small business concerns
16 owned and controlled by service-disabled vet-
17 erans, qualified HUBZone small business con-
18 cerns, small business concerns owned and con-
19 trolled by socially and economically disadvan-
20 taged individuals, and small business concerns
21 owned and controlled by women receiving con-
22 tracts in each North American Industrial Clas-
23 sification System code.

24 (D) The recommendation of the Adminis-
25 trator on continuing, modifying, expanding, or

1 terminating the program established under this
2 section.

3 (8) GAO REPORT ON SCORECARD METHOD-
4 OLOGY.—Not later than September 30, 2018, the
5 Comptroller General of the United States shall sub-
6 mit to the Committee on Small Business of the
7 House of Representatives and the Committee on
8 Small Business and Entrepreneurship of the Senate
9 a report that—

10 (A) evaluates whether the methodology
11 used to calculate a score under this section ac-
12 curately and effectively—

13 (i) measures the compliance of each
14 Federal agency with meeting the goals es-
15 tablished pursuant to section 15(g)(1)(B)
16 of the Small Business Act (15 U.S.C.
17 644(g)(1)(B)); and

18 (ii) encourages Federal agencies to ex-
19 pand opportunities for small business con-
20 cerns, small business concerns owned and
21 controlled by service-disabled veterans,
22 qualified HUBZone small business con-
23 cerns, small business concerns owned and
24 controlled by socially and economically dis-
25 advantaged individuals, and small business

1 concerns owned and controlled by women
2 to compete for and win Federal procure-
3 ment contracts across North American In-
4 dustrial Classification System Codes; and

5 (B) if warranted, makes recommendations
6 on how to improve such methodology to improve
7 its accuracy and effectiveness.

8 (9) DEFINITIONS.—In this subsection:

9 (A) ADMINISTRATOR.—The term “Admin-
10 istrator” means the Administrator of the Small
11 Business Administration.

12 (B) FEDERAL AGENCY.—The term “Fed-
13 eral agency” has the meaning given the term
14 “agency” by section 551(1) of title 5, United
15 States Code, but does not include the United
16 States Postal Service or the Government Ac-
17 countability Office.

18 (C) SCORECARD.—The term “scorecard”
19 shall mean any summary using a rating system
20 to evaluate a Federal agency’s efforts to meet
21 goals established under section 15(g)(1)(B) of
22 the Small Business Act (15 U.S.C.
23 644(g)(1)(B)) that—

24 (i) includes the measures described in
25 paragraph (4); and

1 (ii) assigns a score to each Federal
2 agency evaluated.

3 (D) SMALL BUSINESS ACT DEFINITIONS.—

4 (i) IN GENERAL.—The terms “small
5 business concern”, “small business concern
6 owned and controlled by service-disabled
7 veterans”, “qualified HUBZone small busi-
8 ness concern”, and “small business con-
9 cern owned and controlled by women” shall
10 have the meanings given such terms under
11 section 3 of the Small Business Act (15
12 U.S.C. 632).

13 (ii) SMALL BUSINESS CONCERNS
14 OWNED AND CONTROLLED BY SOCIALLY
15 AND ECONOMICALLY DISADVANTAGED IN-
16 DIVIDUALS.—The term “small business
17 concern owned and controlled by socially
18 and economically disadvantaged individ-
19 uals” has the meaning given that term
20 under section 8(d)(3)(C) of the Small
21 Business Act (15 U.S.C. 637(d)(3)(C)).

1 **TITLE II—BUNDLING AND CON-**
2 **SOLIDATION OF CON-**
3 **TRACTING REQUIREMENTS**
4 **FOR SMALL BUSINESS CON-**
5 **CERNS**

6 **SEC. 201. DATA QUALITY IMPROVEMENT.**

7 (a) IN GENERAL.—Section 15(s) of the Small Busi-
8 ness Act (15. U.S.C. 644(s)) is amended—

9 (1) by redesignating paragraph (4) as para-
10 graph (6); and

11 (2) by inserting after paragraph (3) the fol-
12 lowing new paragraphs:

13 “(4) IMPLEMENTATION.—Not later than the
14 first day of fiscal year 2017, the Administrator of
15 the Small Business Administration shall implement
16 the plan described in this subsection. If the Adminis-
17 trator fails to implement the plan by such date, the
18 Administrator may not exercise the authority under
19 section 7(a)(25)(A) until the plan is implemented.

20 “(5) CERTIFICATION.—The Administrator shall
21 annually provide to the Committee on Small Busi-
22 ness of the House of Representatives and the Com-
23 mittee on Small Business and Entrepreneurship of
24 the Senate certification of the accuracy and com-

1 pleteness of data reported on bundled and consoli-
2 dated contracts.”.

3 (b) GAO STUDY.—

4 (1) STUDY.—Not later than the first day of fis-
5 cal year 2018, the Comptroller General of the
6 United States shall initiate a study on the effective-
7 ness of the plan described in section 15(s) of the
8 Small Business Act (15 U.S.C. 644(s)) that shall as-
9 sess whether contracts were accurately labeled as
10 bundled or consolidated.

11 (2) CONTRACTS EVALUATED.—For the pur-
12 poses of conducting the study described in para-
13 graph (1), the Comptroller General of the United
14 States—

15 (A) shall evaluate, for work in each of sec-
16 tors 23, 33, 54, and 56 (as defined by the
17 North American Industry Classification Sys-
18 tem), not fewer than 100 contracts in each sec-
19 tor;

20 (B) shall evaluate only those contracts—

21 (i) awarded by an agency listed in sec-
22 tion 901(b) of title 31, United States
23 Code; and

24 (ii) that have a Base and Exercised
25 Options Value, an Action Obligation, or a

1 Base and All Options Value (as such terms
2 are defined in the Federal procurement
3 data system described in section
4 1222(a)(4)(A) of title 41, United States
5 Code, or any successor system); and
6 (C) shall not evaluate contracts that have
7 used any set aside authority.

8 (3) REPORT.—Not later than 12 months after
9 initiating the study required by paragraph (1), the
10 Comptroller General of the United States shall re-
11 port to the Committee on Small Business of the
12 House of Representatives and the Committee on
13 Small Business and Entrepreneurship of the Senate
14 on the results from such study and, if warranted,
15 any recommendations on how to improve the quality
16 of data reported on bundled and consolidated con-
17 tracts.

18 **SEC. 202. NOTICE AND JUSTIFICATION REQUIREMENTS**
19 **FOR BUNDLING OR CONSOLIDATION OF CON-**
20 **TRACT REQUIREMENTS.**

21 (a) NOTICE OF CONTRACT CONSOLIDATION FOR AC-
22 QUISSION STRATEGIES.—Section 44(e)(2) of the Small
23 Business Act (15 U.S.C. 657q(e)(2)) is amended by add-
24 ing at the end the following:

1 “(C) NOTICE.—Not later than 7 days after
2 making a determination that an acquisition
3 strategy involving a consolidation of contract
4 requirements is necessary and justified under
5 subparagraph (A), the senior procurement execu-
6 tive or Chief Acquisition Officer shall publish
7 a notice on a public website that such deter-
8 mination has been made. Any solicitation for a
9 procurement related to the acquisition strategy
10 may not be published earlier than 7 days after
11 such notice is published. Along with the publi-
12 cation of the solicitation, the senior procure-
13 ment executive or Chief Acquisition Officer
14 shall publish a justification for the determina-
15 tion, which shall include the information in sub-
16 paragraphs (A) through (E) of paragraph (1).”.

17 (b) NOTICE OF CONTRACT CONSOLIDATION FOR
18 PROCUREMENT STRATEGIES.—Section 15(e)(3) of such
19 Act (15 U.S.C. 644(e)(3)) is amended to read as follows:

20 “(3) STRATEGY SPECIFICATIONS.—If the head
21 of a contracting agency determines that an acquisi-
22 tion plan for a procurement involves a substantial
23 bundling of contract requirements, the head of a
24 contracting agency shall publish a notice on a public
25 website that such determination has been made not

1 later than 7 days after making such determination.
2 Any solicitation for a procurement related to the ac-
3 quisition plan may not be published earlier than 7
4 days after such notice is published. Along with the
5 publication of the solicitation, the head of a con-
6 tracting agency shall publish a justification for the
7 determination, which shall include following informa-
8 tion:

9 “(A) The specific benefits anticipated to be
10 derived from the bundling of contract require-
11 ments and a determination that such benefits
12 justify the bundling.

13 “(B) An identification of any alternative
14 contracting approaches that would involve a
15 lesser degree of bundling of contract require-
16 ments.

17 “(C) An assessment of—

18 “(i) the specific impediments to par-
19 ticipation by small business concerns as
20 prime contractors that result from the
21 bundling of contract requirements; and

22 “(ii) the specific actions designed to
23 maximize small business participation as
24 subcontractors (including suppliers) at var-
25 ious tiers under the contract or contracts

1 that are awarded to meet the require-
2 ments.”.

3 (c) TECHNICAL AMENDMENT.—Section 44(c)(1) of
4 such Act (15 U.S.C. 657q(c)(1)) is amended by striking
5 “Subject to paragraph (4), the head” and inserting “The
6 head”.

7 **TITLE III—ENHANCING COM-**
8 **PETITION IN CONTRACTING**
9 **FOR SMALL BUSINESS CON-**
10 **CERNS**

11 **SEC. 301. JOINT VENTURING AND TEAMING.**

12 (a) JOINT VENTURE OFFERS FOR BUNDLED OR
13 CONSOLIDATED CONTRACTS.—Section 15(e)(4) of the
14 Small Business Act (15 U.S.C. 644(e)(4)) is amended to
15 read as follows:

16 “(4) CONTRACT TEAMING.—

17 “(A) IN GENERAL.—In the case of a solici-
18 tation of offers for a bundled or consolidated
19 contract that is issued by the head of an agen-
20 cy, a small business concern may submit an
21 offer that provides for use of a particular team
22 of subcontractors or a joint venture of small
23 business concerns for the performance of the
24 contract.

1 “(B) EVALUATION OF OFFERS.—The head
2 of the agency shall evaluate the offer of a team
3 or a joint venture of small business concerns in
4 the same manner as other offers, with due con-
5 sideration to the capabilities of all of the pro-
6 posed subcontractors or members of the joint
7 venture as follows:

8 “(i) TEAMS.—When evaluating an
9 offer of a small business prime contractor
10 whose offer includes a proposed team of
11 small business subcontractors, the head of
12 the agency shall consider the capabilities
13 and past performance of each first tier
14 subcontractor that is part of the team as
15 the capabilities and past performance of
16 the team.

17 “(ii) JOINT VENTURES.—When evalu-
18 ating an offer of a joint venture of small
19 business concerns, if the joint venture does
20 not have sufficient capabilities or past per-
21 formance to be considered for award of a
22 contract opportunity, the head of the agen-
23 cy shall consider the capabilities and past
24 performance of each member of the joint

1 venture as the capabilities past perform-
2 ance of the joint venture.

3 “(C) STATUS AS A SMALL BUSINESS CON-
4 CERN.—Participation of a small business con-
5 cern in a team or a joint venture under this
6 paragraph shall not affect the status of that
7 concern as a small business concern for any
8 other purpose.”.

9 (b) TEAM AND JOINT VENTURES OFFERS FOR MUL-
10 TIPLE AWARD CONTRACTS.—Section 15(q)(1) of such Act
11 (15 U.S.C. 644(q)(1)) is amended—

12 (1) in the heading, by inserting “AND JOINT
13 VENTURE” before “REQUIREMENTS”;

14 (2) by striking “Each Federal agency” and in-
15 serting the following:

16 “(A) IN GENERAL.—Each Federal agen-
17 cy”; and

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(B) TEAMS.—When evaluating an offer of
21 a small business prime contractor whose offer
22 includes a proposed team of small business sub-
23 contractors for any multiple award contract
24 above the substantial bundling threshold of the
25 Federal agency, the head of the agency shall

1 consider the capabilities and past performance
2 of each first tier subcontractor that is part of
3 the team as the capabilities and past perform-
4 ance of the offeror.

5 “(C) JOINT VENTURES.—When evaluating
6 an offer of a joint venture of small business
7 concerns for any multiple award contract above
8 the substantial bundling threshold of the Fed-
9 eral agency, if the joint venture does not have
10 sufficient capabilities or past performance to be
11 considered for award of a contract opportunity,
12 the head of the agency shall consider the capa-
13 bilities and past performance of each member of
14 the joint venture as the capabilities and past
15 performance of the joint venture.”.

16 (c) RULEMAKING.—Not later than 1 year after the
17 date of enactment of this section, the Administrator of the
18 Small Business Administration shall issue any regulations
19 necessary to carry out the amendments made by this sec-
20 tion.

21 **SEC. 302. LIMITATIONS ON REVERSE AUCTIONS.**

22 (a) SENSE OF CONGRESS.—It is the sense of Con-
23 gress that, when used appropriately, reverse auctions may
24 improve the Federal Government’s procurement of com-
25 mercially available commodities by increasing competition,

1 reducing prices, and improving opportunities for small
2 businesses.

3 (b) LIMITATIONS ON REVERSE AUCTIONS.—The
4 Small Business Act (15 U.S.C. 631 et seq.) is amended—

5 (1) by redesignating section 47 (15 U.S.C. 631
6 note) as section 48; and

7 (2) by inserting after section 46 the following
8 new section:

9 **“SEC. 47. LIMITATIONS ON REVERSE AUCTIONS.**

10 **“(a) PROHIBITION ON USING REVERSE AUCTIONS**
11 **FOR COVERED CONTRACTS.**—In the case of a covered con-
12 tract described in subsection (c), reverse auction methods
13 may not be used if the award of the contract is to be made
14 under—

15 “(1) section 8(a);

16 “(2) section 8(m);

17 “(3) section 15(a);

18 “(4) section 15(j);

19 “(5) section 31; or

20 “(6) section 36.

21 **“(b) LIMITATIONS ON USING REVERSE AUCTIONS.**—

22 In the case of the award of a contract made under para-
23 graphs (1) through (6) of subsection (a) that is not a cov-
24 ered contract, reverse auction methods may be used pursu-
25 ant to the following:

1 “(1) DECISIONS REGARDING USE OF A RE-
2 VERSE AUCTION.—The following decisions are the
3 responsibility of the contracting officer and may not
4 be delegated to any person except for another con-
5 tracting officer who meets the training requirements
6 of paragraph (2):

7 “(A) A decision to use reverse auction
8 methods as part of the competition for award of
9 a contract.

10 “(B) Any decision made after the decision
11 described in subsection (A) regarding the ap-
12 propriate evaluation criteria, the inclusion of
13 vendors, the acceptability of vendor submissions
14 (including decisions regarding timeliness), and
15 the selection of the winner.

16 “(2) TRAINING REQUIRED.—Only a contracting
17 officer who has received training on the appropriate
18 use and supervision of reverse auction methods of
19 contracting may supervise or use such methods in a
20 procurement for a contract. The training shall be
21 provided by, or similar to the training provided by,
22 the Defense Acquisition University as described in
23 section 824 of the Carl Levin and Howard P. ‘Buck’
24 McKeon National Defense Authorization Act for
25 Fiscal Year 2015 (Public Law 113–291).

1 “(3) NUMBER OF OFFERS; REVISIONS TO
2 BIDS.—A Federal agency may not award a contract
3 using a reverse auction method if only one offer is
4 received or if offerors do not have the ability to sub-
5 mit revised bids with lower prices throughout the
6 course of the auction.

7 “(4) TECHNICALLY ACCEPTABLE OFFERS.—A
8 Federal agency awarding a contract using a reverse
9 auction method shall evaluate the technical accept-
10 ability of offers only as technically acceptable or un-
11 acceptable.

12 “(5) USE OF PRICE RANKINGS.—A Federal
13 agency may not award a contract using a reverse
14 auction method if at any time during the award
15 process the Federal agency misinforms an offeror
16 about the price ranking of the offeror’s last offer
17 submitted in relation to offers submitted by other
18 offerors.

19 “(6) USE OF THIRD-PARTY AGENTS.—If a Fed-
20 eral agency uses a third party agent to assist with
21 the award of contracts using a reverse auction meth-
22 od, the Federal agency shall ensure that—

23 “(A) inherently governmental functions (as
24 such term is used in section 2303 of title 41,
25 United States Code) are not performed by pri-

1 vate contractors, including by the third party
2 agent;

3 “(B) information on the past contract per-
4 formance of offerors created by the third party
5 agent and shared with the Federal agency is
6 collected, maintained, and shared in compliance
7 with section 1126 of title 41, United States
8 Code;

9 “(C) information on whether an offeror is
10 a responsible source (as defined in section 113
11 of title 41, United States Code) that is created
12 by the third party agent and shared with the
13 Federal agency is shared with the offeror and
14 complies with section 8(b)(7) of this Act; and

15 “(D) disputes between the third party
16 agent and an offeror may not be used to justify
17 a determination that an offeror is not a respon-
18 sible source (as defined in section 113 of title
19 41, United States Code) or to otherwise restrict
20 the ability of an offeror to compete for the
21 award of a contract or task or delivery order.

22 “(c) DEFINITIONS.—In this section:

23 “(1) CONTRACTING OFFICER.—The term ‘con-
24 tracting officer’ has the meaning given that term in
25 section 2101(1) of title 41, United States Code.

1 “(2) COVERED CONTRACT.—The term ‘covered
2 contract’ means a contract—

3 “(A) for design and construction services;

4 “(B) for goods purchased to protect Fed-
5 eral employees, members of the Armed Forces,
6 or civilians from bodily harm; or

7 “(C) for goods or services other than those
8 goods or services described in subparagraph (A)
9 or (B)—

10 “(i) to be awarded based on factors
11 other than price and technical responsi-
12 bility; or

13 “(ii) if awarding the contract requires
14 the contracting officer to conduct discus-
15 sions with the offerors about their offer.

16 “(3) DESIGN AND CONSTRUCTION SERVICES.—
17 The term ‘design and construction services’ means—

18 “(A) site planning and landscape design;

19 “(B) architectural and interior design;

20 “(C) engineering system design;

21 “(D) performance of construction work for
22 facility, infrastructure, and environmental res-
23 toration projects;

24 “(E) delivery and supply of construction
25 materials to construction sites;

1 “(F) construction, alteration, or repair, in-
2 cluding painting and decorating, of public build-
3 ings and public works; and

4 “(G) architectural and engineering services
5 as defined in section 1102 of title 40, United
6 States Code.

7 “(4) REVERSE AUCTION.—The term ‘reverse
8 auction’ means, with respect to procurement by an
9 agency, an auction between a group of offerors who
10 compete against each other by submitting offers for
11 a contract or task or delivery order with the ability
12 to submit revised offers with lower prices throughout
13 the course of the auction.”.

14 **SEC. 303. REVISION TO THE NONMANUFACTURER RULE.**

15 (a) PROCUREMENT CONTRACTS.—Section 8(a)(17)
16 of the Small Business Act (15 U.S.C. 637(a)(17)) is
17 amended—

18 (1) in subparagraph (A), by striking “any pro-
19 curement contract” and all that follows through
20 “section 15” and inserting “any procurement con-
21 tract, which contract has as its principal purpose the
22 supply of a product to be let pursuant to this sub-
23 section or subsection (m), or section 15(a), 31, or
24 36,”; and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(C) LIMITATION.—This paragraph shall not
4 apply to a contract that has as its principal purpose
5 the acquisition of services or construction.”.

6 (b) SUBCONTRACTOR CONTRACTS.—Section 46(a)(4)
7 of such Act (15 U.S.C. 657s(a)(4)) is amended by striking
8 “for supplies from a regular dealer in such supplies” and
9 inserting “which is principally for supplies from a regular
10 dealer in such supplies, and which is not a contract prin-
11 cipally for services or construction,”.

12 **TITLE IV—SMALL BUSINESS ACT**
13 **PERSONNEL AMENDMENTS**

14 **SEC. 401. ESTABLISHMENT OF AN OFFICE OF HEARINGS**
15 **AND APPEALS IN THE SMALL BUSINESS AD-**
16 **MINISTRATION.**

17 (a) ESTABLISHMENT OF AN OFFICE OF HEARINGS
18 AND APPEALS IN THE SMALL BUSINESS ADMINISTRA-
19 TION.—Section 5 of the Small Business Act (15 U.S.C.
20 634) is amended by adding at the end the following new
21 subsection:

22 “(i) OFFICE OF HEARINGS AND APPEALS.—

23 “(1) ESTABLISHMENT.—

1 “(A) OFFICE.—There is established in the
2 Administration an Office of Hearings and Ap-
3 peals—

4 “(i) to impartially decide matters re-
5 lating to program decisions of the Admin-
6 istrator—

7 “(I) for which Congress requires
8 a hearing on the record; or

9 “(II) that the Administrator des-
10 ignates for hearing by regulation; and

11 “(ii) which shall contain the office of
12 the Administration that handles requests
13 submitted pursuant to sections 552 of title
14 5, United States Code (commonly referred
15 to as the ‘Freedom of Information Act’)
16 and maintains records pursuant to section
17 552a of title 5, United States Code (com-
18 monly referred to as the ‘Privacy Act of
19 1974’).

20 “(B) JURISDICTION.—The Office of Hear-
21 ings and Appeals shall only hear appeals of
22 matters as described in the this Act, the Small
23 Business Investment Act of 1958 (15 U.S.C.
24 661 et seq.), and title 13 of the Code of Federal
25 Regulations.

1 “(C) ASSOCIATE ADMINISTRATOR.—The
2 head of the Office of Hearings and Appeals
3 shall be the Chief Hearing Officer appointed
4 under section 4(b)(1), who shall be responsible
5 to the Administrator.

6 “(2) CHIEF HEARING OFFICER DUTIES.—

7 “(A) IN GENERAL.—The Chief Hearing
8 Officer shall—

9 “(i) be a career appointee in the Sen-
10 ior Executive Service and an attorney li-
11 censed by a State, commonwealth, territory
12 or possession of the United States, or the
13 District of Columbia; and

14 “(ii) be responsible for the operation
15 and management of the Office of Hearings
16 and Appeals.

17 “(B) ALTERNATIVE DISPUTE RESOLU-
18 TION.—The Chief Hearing Officer may assign a
19 matter for mediation or other means of alter-
20 native dispute resolution.

21 “(3) HEARING OFFICERS.—

22 “(A) IN GENERAL.—The Office of Hear-
23 ings and Appeals shall appoint Hearing Officers
24 to carry out the duties described in paragraph
25 (1)(A)(i).

1 “(B) CONDITIONS OF EMPLOYMENT.—A
2 Hearing Officer appointed under this para-
3 graph—

4 “(i) shall serve in the excepted service
5 as an employee of the Administration
6 under section 2103 of title 5, United
7 States Code, and under the supervision of
8 the Chief Hearing Officer;

9 “(ii) shall be classified at a position to
10 which section 5376 of title 5, United
11 States Code, applies; and

12 “(iii) shall be compensated at a rate
13 not exceeding the maximum rate payable
14 under such section.

15 “(C) AUTHORITY; POWERS.—Notwith-
16 standing section 556(b) of title 5, United States
17 Code, a Hearing Officer—

18 “(i) shall have the authority to hear
19 claims arising under section 554 of such
20 title;

21 “(ii) shall have the powers described
22 in section 556(e) of such title; and

23 “(iii) shall conduct hearings and issue
24 decisions in the manner described under

1 sections 555, 556, and 557 of such title, as
2 applicable.

3 “(D) TREATMENT OF CURRENT PER-
4 SONNEL.—An individual serving as a Judge in
5 the Office of Hearings and Appeals (as that po-
6 sition and office are designated in section
7 134.101 of title 13, Code of Federal Regula-
8 tions) on the effective date of this subsection
9 shall be considered as qualified to be and redesi-
10 gnated as a Hearing Officer.

11 “(4) HEARING OFFICER DEFINED.—In this
12 subsection, the term ‘Hearing Officer’ means an in-
13 dividual appointed or redesignated under this sub-
14 section who is an attorney licensed by a State, com-
15 monwealth, territory or possession of the United
16 States, or the District of Columbia.”.

17 (b) ASSOCIATE ADMINISTRATOR AS CHIEF HEARING
18 OFFICER.—Section 4(b)(1) of such Act (15 U.S.C.
19 633(b)) is amended by adding at the end the following:
20 “One such Associate Administrator shall be the Chief
21 Hearing Officer, who shall administer the Office of Hear-
22 ings and Appeals established under section 5(i).”.

23 (c) REPEAL OF REGULATION.—Section 134.102(t) of
24 title 13, Code of Federal Regulations, as in effect on Janu-
25 ary 1, 2015, (relating to types of hearings within the juris-

1 diction of the Office of Hearings and Appeals) shall have
2 no force or effect.

3 **SEC. 402. TRAINING REQUIREMENTS FOR PROCUREMENT**
4 **CENTER REPRESENTATIVES.**

5 Section 15(l)(5)(A)(iii) of the Small Business Act (15
6 U.S.C. 644(l)(5)(A)(iii)) is amended by striking “except
7 that” and all that follows through the period at the end
8 and inserting the following: “except that—

9 “(I) any person serving in such a
10 position on or before January 3,
11 2013, may continue to serve in that
12 position for a period of 5 years with-
13 out the required certification; and

14 “(II) any person hired for such
15 position after January 3, 2013, may
16 have up to one calendar year from the
17 date of employment to obtain the re-
18 quired certification.”.

19 **SECTION 403. TRAINING REQUIREMENTS FOR BUSINESS**
20 **OPPORTUNITY SPECIALISTS.**

21 (a) IN GENERAL.—Section 4 of the Small Business
22 Act (15 U.S.C. 633) is amended by adding at the end the
23 following new subsection:

24 “(g) CERTIFICATION REQUIREMENTS BUSINESS OP-
25 PORTUNITY SPECIALISTS.—A Business Opportunity Spe-

1 cialist described under section 7(j)(10)(D) shall have a
2 Level I Federal Acquisition Certification in Contracting
3 (or any successor certification) or the equivalent Depart-
4 ment of Defense certification, except that—

5 “(1) a Business Opportunity Specialist who was
6 serving on or before January 3, 2013, may continue
7 to serve as a Business Opportunity Specialist for a
8 period of 5 years beginning on such date without
9 such a certification; and

10 “(2) any person hired as a Business Oppor-
11 tunity Specialist after January 3, 2013, may have
12 up to one calendar year from the date of employ-
13 ment to obtain the required certification.”.

14 (b) CONFORMING AMENDMENT.—Section
15 7(j)(10)(D)(i) of such Act (15 U.S.C. 636(j)(10)(D)(i)) is
16 amended by striking the second sentence.

17 **TITLE V—SIZE STANDARDS FOR**
18 **SMALL BUSINESS CONCERNS**

19 **SEC. 501. PETITIONS FOR RECONSIDERATION OF SIZE**
20 **STANDARDS FOR SMALL BUSINESS CON-**
21 **CERNS.**

22 Section 3(a) of the Small Business Act (15 U.S.C.
23 632(a)) is amended by adding at the end the following:

24 “(9) PETITIONS FOR RECONSIDERATION OF
25 SIZE STANDARDS.—

1 “(A) IN GENERAL.—A person may file a
2 petition for reconsideration with the Office of
3 Hearings and Appeals (as established by section
4 5(i)) of a size standard revised, modified, or es-
5 tablished by the Administrator pursuant to this
6 subsection.

7 “(B) TIME LIMIT.—A person filing a peti-
8 tion for reconsideration described in subpara-
9 graph (A) shall file such petition not later than
10 30 days after the publication in the Federal
11 Register of the notice of final rule to revise,
12 modify, or establish size standards described in
13 paragraph (6).

14 “(C) PROCESS FOR AGENCY REVIEW.—The
15 Office of Hearings and Appeals shall use the
16 same process it uses to decide challenges to the
17 size of a small business concern to decide a pe-
18 tition for review pursuant to this paragraph.

19 “(D) JUDICIAL REVIEW.—The publication
20 of a final rule in the Federal Register described
21 in subparagraph (B) shall be considered final
22 agency action for purposes of seeking judicial
23 review. Filing a petition for reconsideration
24 under subparagraph (A) shall not be a condi-

1 tion precedent to judicial review of any such
2 size standard.”.