

SMALL BUSINESS OPPORTUNITY ACT OF 2012

DECEMBER 21, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 3980]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3980) to amend the Small Business Act with respect to procurement center representatives and acquisition planning, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Small Business Opportunity Act of 2012”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—PROCUREMENT CENTER REPRESENTATIVES

Sec. 101. Procurement center representatives.

Sec. 102. Small Business Act contracting requirements training.

TITLE II—ACQUISITION PLANNING

Sec. 201. Acquisition planning.

TITLE I—PROCUREMENT CENTER REPRESENTATIVES

SEC. 101. PROCUREMENT CENTER REPRESENTATIVES.

(a) **IN GENERAL.**—Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended by striking the subsection enumerator and inserting the following:

“(l) **PROCUREMENT CENTER REPRESENTATIVES.**—”.

(b) **ASSIGNMENT AND ROLE.**—Paragraph (1) of section 15(l) of such Act (15 U.S.C. 644(l)) is amended to read as follows:

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

(c) **ACTIVITIES.**—Section 15(l)(2) of such Act (15 U.S.C. 644(l)(2)) is amended—

(1) in the matter preceding subparagraph (A) by striking “(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout” and inserting the following:

“(2) **ACTIVITIES.**—A”;

(2) by striking subparagraph (A) and inserting the following:

“(A) attend any provisioning conference or similar evaluation session during which a determination may be made with respect to the procurement method to be used to satisfy a requirement, review any acquisition plan with respect to a requirement, and make recommendations regarding procurement method determinations and acquisition plans;”;

(3) in subparagraph (B)—

(A) by striking “(B) review, at any time, restrictions on competition” and inserting the following:

“(B) review, at any time, barriers to small business participation in Federal contracting”;

(B) by striking “items” and inserting “goods and services”; and

(C) by striking “limitations” and inserting “barriers”;

(4) in subparagraph (C) by striking “(C) review restrictions on competition” and inserting the following:

“(C) review barriers to small business participation in Federal contracting”;

(5) by striking subparagraph (D) and inserting the following:

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

(6) in subparagraph (E) by striking “(E) have access to” and inserting the following:

“(E) have access to”; and

(7) by striking subparagraphs (F) and (G) and inserting the following:

“(F) receive, from personnel responsible for reviewing unsolicited proposals, copies of unsolicited proposals from small business concerns and any information on outcomes relating to such proposals;

“(G) participate in any session or planning process and review any documents with respect to a decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

“(H) have electronic access to any acquisition plan developed or in development with respect to a procurement activity;

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

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

(d) APPEALS.—Section 15(l)(3) of such Act (15 U.S.C. 644(l)(3)) is amended by striking “(3) A breakout procurement center representative” and inserting the following:

“(3) APPEALS.—A procurement center representative”.

(e) NOTIFICATION AND INCLUSION.—Paragraph (4) of section 15(l) of such Act (15 U.S.C. 644(l)) is amended to read as follows:

“(4) NOTIFICATION AND INCLUSION.—A procurement center representative shall be notified of and included in all applicable acquisition planning processes.”.

(f) POSITION REQUIREMENTS.—Section 15(l)(5) of such Act (15 U.S.C. 644(l)(5)) is amended—

(1) by striking the paragraph enumerator and inserting the following:

“(5) POSITION REQUIREMENTS.—”;

(2) by striking subparagraphs (A) and (B) and inserting the following:

“(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 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 the date of enactment of this clause may continue to serve in that position for a period of 5 years without the required certification.”; and

(3) in subparagraph (C) by striking “(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to” and inserting the following:

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

(g) MAJOR PROCUREMENT CENTER DEFINED.—Section 15(l)(6) of such Act (15 U.S.C. 644(l)(6)) is amended—

(1) by striking “(6) For purposes” and inserting the following:

“(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes”; and

(2) by striking “other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative” and inserting “goods or services, including goods or services that are commercially available”.

(h) TRAINING.—Section 15(l)(7) of such Act (15 U.S.C. 644(l)(7)) is amended—

(1) by striking the paragraph enumerator and inserting the following:

“(7) TRAINING.—”;

(2) by striking subparagraph (A) and inserting the following:

“(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, a procurement center representative shall provide training for contracting officers, other appropriate personnel of the procurement center to which such representative is assigned, and small businesses groups seeking to do business with such procurement center. Such training shall acquaint the participants with the provisions of this subsection and shall instruct the participants in methods designed to further the purposes of this 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.”; and

(3) in subparagraph (B)—

(A) by striking “(B) The breakout procurement center representative” and inserting the following:

“(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative”; and

(B) by striking “sixty” and inserting “60”.

SEC. 102. SMALL BUSINESS ACT CONTRACTING REQUIREMENTS TRAINING.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Defense Acquisition University and the Federal Acquisition Institute shall each provide a course on contracting requirements under the Small Business Act, including the requirements for 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.

(b) **COURSE REQUIRED.**—To have a Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification an individual shall be required to complete the course established under subsection (a).

(c) **REQUIREMENT THAT BUSINESS OPPORTUNITY SPECIALISTS BE CERTIFIED.**—Section 7(j)(10)(D)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(D)(i)) is amended by inserting after “to assist such Program Participant.” the following: “The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the Small Business Opportunity Act of 2012 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification.”.

(d) **GAO REPORT.**—Not later than 365 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the relationship between the size and quality of the acquisition workforce and the Federal government’s ability to maximize the utilization of small businesses in Federal procurement. The report shall specifically address the following:

- (1) The extent to which training on small business contracting laws affects a contracting officer’s determination to use one of the contracting authorities provided in the Small Business Act.
- (2) The relationship between a robust Federal acquisition workforce and small business success in obtaining Federal contracting opportunities.
- (3) The effect on economic growth if small businesses experienced a significant reduction in small business procurement activities.
- (4) The effect of the anticipated acceleration of retirements by the acquisition workforce on small business procurement opportunities.

TITLE II—ACQUISITION PLANNING

SEC. 201. ACQUISITION PLANNING.

Section 15(e)(1) of the Small Business Act (15 U.S.C. 644(e)(1)) is amended—

- (1) by striking “the various agencies” and inserting “a Federal department or agency”; and
- (2) by striking the period and inserting “and each such Federal department or agency shall—
 - “(A) enumerate opportunities for the participation of small business concerns during all acquisition planning processes and in all acquisition plans;
 - “(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in all acquisition planning processes and provide that Director access to all acquisition plans in development; and
 - “(C) invite the participation of the appropriate procurement center representative in all acquisition planning processes and provide that representative access to all acquisition plans in development.”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 3980, the “Small Business Opportunity Act of 2012,” is to amend the Small Business Act (the Act)¹ to improve the ability of the Small Business Administration’s (SBA’s) Procurement Center Representatives (PCRs) to provide input into the acquisition strategy. The PCRs act as small business contracting advocates at major federal contracting activities, so their earlier involvement in the procurement process should lead to greater contracting opportunities for small business. The bill also requires improved training on small business contracting for federal procurement officials.

¹ Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232, was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85–536, § 1, 72m Stat, 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657q.

III. NEED FOR LEGISLATION

The Small Business Act finds that awarding prime contracts to small businesses serves the nation in three ways. First, small business contracting is in “the interest of maintaining or mobilizing the Nation’s full productive capacity.”² Second, small business contracting is “in the interest of war or national defense programs.”³ Third, it serves “the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government in each industry.”⁴

To ensure the best processes and procedures for small businesses in contracting, the law must continue to evolve as contracting does in practice. H.R. 3980 addresses several outdated and outmoded provisions to reflect advances in procurement policies, essentially bringing these policies into compliance with current procurement practices as well as helping to ensure compliance with small business contracting laws.

For example, paragraph (1) of Section 15(1) of the Act describes the role of breakout procurement representatives (BPCRs). BPCRs are SBA employees who are assigned to major procurement centers to act as advocates for small business contracting opportunities. Generally, the BPCR is responsible for breaking out items from large procurements so that the item may be awarded to a small business.

Over time, the distinction between BPCRs and PCRPs has diminished, since most procurements do not have single items broken out for individual contracts, but instead are more integrated. At the same time, contracting opportunities for small businesses have expanded. As a result, H.R. 3980 helps to update the Act by removing the distinction between BPCRs and PCRPs, eliminating BPCRs, and revises the job description for PCRPs to reflect today’s procurement practices. Because there are fewer than 60 PCRPs to review over half a trillion dollars in federal contracts, it makes sense to focus on the activities on which PCRPs may produce the best results for small business contractors. For many years, PCRPs have attended provisioning conferences or guidance meetings to assist them in identifying opportunities for small businesses. While these conferences may be helpful, they are no longer essential, as detailed purchasing procedures are provided by the Federal Acquisition Regulation (FAR). Therefore, the bill permits PCRPs to attend provisioning conferences, but does not require them to do so.

As the primary federal government advocate for small business, the Small Business Administration (SBA) should help to ensure that advocates for small businesses are involved in the procurement process at critical junctures. According to a recent report by the SBA Inspector General, agencies are not always diligent about application of small business contracting laws.⁵ The report recommended that contracting personnel “be adequately trained on small business procurement” and ensure that personnel “are re-

²Small Business Act, § 15(a), 15 U.S.C. § 644(a).

³*Id.*

⁴*Id.*

⁵Office of Inspector General, SBA, Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration in Fiscal Year 2013 1 (2012), available at <http://www.sba.gov/sites/default/files/FY%202013%20Management%20Challenges%20OIG%20Report%2013-02%20.pdf>.

viewing [the government certification] database prior to awarding contracts.”⁶

Currently, the Offices of Small and Disadvantaged Business Utilization (OSDBUs) and PCRs, which are advocates for small business contractors, are not included in the federal procurement process until just before a Request for Proposal or Quotation is released—very late in the process. In addition, federal acquisition plans do not address how small businesses will be utilized. Therefore, the bill allows PCRs to review and make recommendations on procurements. Involving OSDBUs and PCRs in acquisition plans at the beginning of the procurement process should yield additional contracting opportunities for small businesses and operating efficiencies should increase. The legislation also allows PCRs to review barriers to small business contracting, and updates the law to recognize that services are as likely to be procured as goods.

Additionally, the provisions relating to technical data in current law do not reflect the current practice in procurements. Restrictions on technical data have been addressed in numerous laws, standardized within agencies, and should similarly be addressed in the Act. For example, today PCRs have little or no influence over technical restrictions or the evaluation of technical proposals, and no ability to evaluate unsolicited proposals generally or unsolicited engineering proposals in particular. The Act encourages small businesses to provide this information to PCRs, which may give the businesses a misunderstanding of PCRs’ role or the misplaced hope of their influence.

In aiming to focus PCRs where their procurement activities may have the most impact for small businesses, the legislation directs PCRs to review acquisition plans at the beginning of—and throughout—the acquisition process. It also directs PCRs to make recommendations regarding procurement methods and acquisition plans and review barriers to small business contracting. Finally, the PCRs are instructed to review bundled or consolidated contracts and advocate against bundling where it is unjustified.

By eliminating BPCRs and aptly defining PCRs, the bill helps to address concerns of the SBA Inspector General that agencies are not always diligent about the application of small business contracting law. Involving PCRs early in the contracting process may help to avoid agencies misreporting large company contracts as those performed by small ones.

The Act currently requires BPCRs to be full-time employees who are familiar with supplies and services purchased by the major procurement center where they are employed, and some need to be accredited engineers. The bill drops the engineering requirement, and requires PCRs to be certified as contract specialists at the highest level offered by the federal government. This ensures that PCRs will have the technical expertise to serve as an advocate for small businesses when negotiating with an agency’s contracting personnel.

Current law defines a major procurement center as one the Administrator designates as purchasing a substantial dollar value of other than commercial items. Because commercial item acquisition offers great opportunities for small business contracting, the bill al-

⁶*Id.*

lows the Administrator to consider the purchase of commercially available goods and services when designating major purchase centers.

BPCRs must currently brief the head of contracting annually and provide training to contracting personnel on the Act's requirements. This provision duplicates the training that is offered by other sources, such as the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI) and others. The bill retains the briefing requirement but stipulates that training is permissible so long as it does not interfere with the primary goal of providing procurement assistance to small businesses. In addition, the bill requires that a course on small business contracting be established by DAU and FAI, which are charged with, and funded to, provide training for federal contracting personnel. Small business training is currently available only to senior contracting personnel. It is junior personnel who may better assist small firms because these contracting officers are assigned responsibility for smaller dollar contracts.

Section 15(e)(1) of the Act directs agencies to use procurement strategies to maximize small business procurement opportunities. Opportunities that benefit small businesses, the government and taxpayers are well-planned, budgeted and have greater lead time. However, in many cases, PCRs are given a solicitation very late in the acquisition process, making it difficult to ensure opportunities are available for small businesses. Therefore, the bill requires agencies to define these opportunities at each stage of the acquisition process, to maximize opportunity for small businesses and create a more efficient and effective procurement.

IV. HEARINGS

During the 112th Congress, the Subcommittee on Contracting and Workforce held two hearings related to matters raised in H.R. 3980. The first hearing was entitled "Insourcing Gone Awry: Outsourcing Small Business Jobs" on June 23, 2011. This hearing discussed the Executive Branch's use of insourcing and the effects it has on small firms. The second hearing was entitled "Helping Small Businesses Compete: Challenges within Programs Designed to Assist Small Contractors" and held on September 15, 2011. This hearing discussed the challenges currently facing the SBA's Procurement Center Representatives (PCR) and examined a recent report by the GAO regarding ways to improve the program.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 7, 2012 and ordered H.R. 3980 reported, as amended, to the House by a voice vote at 3:40 p.m. During the markup, three amendments were offered. All three amendments were adopted. Disposition of the amendments is addressed below and is based on the order amendments were filed with the Clerk of the Committee and not necessarily in the order they were considered at the markup.

Amendment Number One filed by Mr. Schilling (R-IL) allows procurement center representatives who are otherwise qualified under the Act and serving at the bill's date of enactment to con-

tinue to serve in that position for a period of five years without the required certification. The amendment was adopted by voice vote at 3:35 p.m.

Amendment Number Two filed by Ms. Chu (D-CA) clarifies that a PCR may provide training so long as it does not interfere with the representative carrying out other activities, including the requirements for small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by economically-disadvantaged individuals, and small business concerns owned and controlled by women. The amendment also requires that Business Opportunity Specialists (BOS) at the SBA have at least a Level I Federal Acquisition Certification in contracting, or the equivalent Department of Defense certification, except a BOS serving at the date of enactment may continue to serve as a Business Opportunity Specialist for a period of five years without that certification. The amendment was adopted by voice vote at 3:37 p.m.

Amendment Number Three filed by Mr. Richmond (D-LA) requires that the Government Accountability Office prepare a study for the Committee on the relationship between the size and quality of the acquisition workforce and the federal government's ability to maximize the utility of small businesses in federal procurement. The amendment was adopted by voice vote at 3:39 p.m.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. No recorded votes were taken in the consideration of the bill or amendments.

AMENDMENT TO H.R. 3980

OFFERED BY MR. SCHILLING OF ILLINOIS

Page 6, line 14, insert after "certification" the following: ", except that any person serving in such a position on the date of enactment of this clause may continue to serve in that position for a period of 5 years without the required certification".

AMENDMENT TO H.R. 3980

OFFERED BY MS. CHU OF CALIFORNIA

Page 8, line 24, insert ", including the requirements for 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," before the period at the end.

Page 9, insert after line 5 the following:

(c) REQUIREMENT THAT BUSINESS OPPORTUNITY SPECIALISTS BE CERTIFIED.—Section 7(j)(10)(D)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(D)(i)) is amended by inserting after “to assist such Program Participant.” the following: “The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the Small Business Opportunity Act of 2012 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification.”.

AMENDMENT TO H.R. 3980

OFFERED BY MR. RICHMOND OF LOUISIANA

Page 9, insert after line 5 the following:

(c) GAO REPORT.—Not later than 365 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate on the relationship between the size and quality of the acquisition workforce and the Federal government’s ability to maximize the utilization of small businesses in Federal procurement. The report shall specifically address the following:

(1) The extent to which training on small business contracting laws affects a contracting officer’s determination to use one of the contracting authorities provided in the Small Business Act.

(2) The relationship between a robust Federal acquisition workforce and small business success in obtaining Federal contracting opportunities.

(3) The effect on economic growth if small businesses experienced a significant reduction in small business procurement activities.

(4) The effect of the anticipated acceleration of retirements by the acquisition workforce on small business procurement opportunities.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 3980

SECTION-BY-SECTION ANALYSIS OF H.R. 3980 AS AMENDED

Section 1—Short Title; Table of Contents

This section provides that the bill may be cited as the “Small Business Opportunity Act of 2012” and includes a table of contents for the bill.

Title I—Procurement Center Representatives

Section 101. Procurement Center Representatives

Subsection (a)—In General

Section 15(1) of the Small Business Act (the Act), 15 U.S.C. § 644(1), is titled “Procurement Center Representatives.”

Subsection (b)—Assignment and Role

Paragraph (1) of Section 15(1) currently addresses the role of BPCRs. BPCRs are employees of the SBA who are assigned to major procurement centers in order to advocate for small business contracting opportunities. Currently, Paragraph (1) requires the Administrator to assign a BPCR to each major procurement center, and to provide the BPCR with any required assistance. The BPCR is responsible for the activities delineated later, but has a primary responsibility of being the advocate for breaking out items from larger procurements so that the item could be awarded to a small business. The BPCR is distinct from the PCR referenced in Section 15(k) of the Act, although they have similar goals regarding small business contracting.

Under current law, BPCRs are required to be engineers. SBA only has one PCR who is an engineer, meaning that only one BPCR is fulfilling the requirement currently in the Act. However, much of this is due to the fact that the job has evolved over time, and the distinction between PCR and BPCR is no longer necessary. Procurements are no longer run so that one widget can be broken out of a major weapon system—instead, weapons systems are procured using system integrators. The opportunities for small businesses have also evolved, and expanded. Consequently, the bill inserts a new Paragraph (1) that removes the distinction between BPCRs and PCRs.

Subsection (c)—Activities

Paragraph (2) of Section 15(1) currently requires the BPCR to attend provisioning conferences, review acquisition method coding, review restrictions on competition arising out of restrictions on the rights of the United States in technical data, make technical data available to agency personnel and to offerors, access procurement records and data commensurate with their security clearance, and receive and conduct cost and technical analyses of unsolicited proposals.

Given that there are fewer than 60 PCRs responsible for reviewing over half a trillion dollars in federal contracts, it is important to focus the PCRs on areas where they can deliver the greatest return for small businesses. To provide this focus, this subsection updates the job description for the PCRs to reflect current procurement practices. While attending provisioning conferences may assist PCRs as they seek opportunities for small businesses, the majority of purchases made by the federal government are no longer commodities but instead commercial items, goods and services. Contracting decisions no longer stem from the conferences, but from a detailed and regulated method of acquisition planning governed by the FAR. Thus, the bill in new Section 15(1)(2)(A) allows PCRs to attend provisioning conferences, but also provides that

they can review and make recommendations regarding acquisition plans and procurement methods. If a procurement is structured with small business participation in mind from the initial requirement, this should create new opportunities for small businesses and increase operating efficiencies in the federal agencies. Likewise, rather than reviewing coding methods, the bill modifies subparagraph (B) to permit the review of barriers to the small business participation in federal contracting, and recognizes that services are as likely to be procured as items.

Similarly, the provisions in current law relating to technical data do not reflect current practice. Restrictions on technical data have now been addressed through numerous statutory reforms and are standardized within agencies. The PCRs have little opportunity to influence these restrictions. Technical data packages are now routinely provided to offerors through a government-wide portal, *www.fbo.gov*. PCRs also lack the ability to evaluate unsolicited proposals or unsolicited engineering proposals. Therefore, encouraging small businesses to provide these documents to PCRs gives the small firm false hope and the PCR's work is unlikely to yield results for small businesses. Instead, small businesses should be encouraged to submit unsolicited proposals following the process in the FAR.

Therefore, the legislation directs the PCRs to focus their efforts on creating the maximum practicable opportunity for small business utilization. As delineated in the new subparagraphs (C) through (I), this includes reviewing acquisition plans at the forefront and throughout the planning process; making recommendations regarding procurement method determinations and acquisition plans; reviewing barriers to small business concerns participating in federal contracting; reviewing any bundled or consolidated solicitation or contract; and being an advocate against the bundling of contract requirements when not justified. It directs them to work with agencies on pursuing unsolicited proposals they received from small business concerns; participating in any planning session or process; and reviewing any documents with respect to a decision to bring an activity in-house to be performed by federal employees that is currently being performed by a small business concern. It provides PCRs with access to any acquisition plan developed or in development, and allows them to take on other responsibilities as assigned to promote the maximum practicable utilization of small businesses.

Subsection (d)—Appeals

Under current law, BPCRs have the ability to appeal the decision to not set aside a requirement for small businesses. The bill preserves the authority for appeals, but assigns it to PCRs since there will no longer be BPCRs.

Subsection (e)—Notification and Inclusion

Section 15(1)(4) currently requires that the Administrator assign and collocate at least two small business technical advisors with the BPCR in order to assist the BPCR. The Committee is unaware of any such individuals ever existing, and given the fiscal realities it is unlikely that these employees will ever appear. Therefore, paragraph (4) is replaced with a requirement that the PCR be noti-

fied of and included in all applicable acquisition planning processes. This early involvement will help to reduce the need for the PCRs to exercise their appeal authority.

Subsection (f)—Position Requirements

The Act currently requires that BPCRs be full time employees familiar with the supplies and services purchased by the major procurement center where they work, and that some BPCRs be accredited engineers. While the bill retains the first requirement, it replaces the engineering requirement with a requirement that the PCR be certified at the highest level of certification for contract specialists offered by the government. This will ensure that the PCR has the technical contracting expertise to negotiate with agency contracting personnel on behalf of small businesses. If SBA's PCRs do not currently meet this requirement, the Committee expects that SBA would avail itself of the free training available through the FAI and DAU to bring those PCRs into compliance. Maintaining this certification also will require SBA to ensure the PCRs receive ongoing continuing education. Again, the Committee expects that SBA would use the free resources currently available to meet these requirements. The compensation requirements in subparagraph (C) are retained, but amended to replace BPCR with PCR. Additionally, this subsection allows PCRs who are otherwise qualified under the Act and serving at the bill's date of enactment to continue to serve in that position for a period of five years without the required certification.

Subsection (g)—Major Procurement Center Defined

Paragraph (6) of section 15(l) currently defines a major procurement center as one the Administrator deems purchases a substantial dollar value of other than commercial items. However, commercial item acquisitions offer great opportunities for small business participation, especially since many services are considered commercial items. Hence, something like computer programming could be deemed a commercial item. Therefore, the bill changes the definition to allow the Administrator to consider purchases of commercially available goods and services when defining major procurement centers.

Subsection (h)—Training

Paragraph (7) of Section 15(l) currently directs the BPCRs to annually brief the head of contracting activity, and to provide training to these contracting personnel on the requirements of the Act. While such training is laudable, it is duplicative of the education provided by FAI and DAU—training contracting personnel can access for free. Likewise, the training conducted by the PCRs for small business groups duplicates of the training currently provided by the Procurement Technical Assistance Centers, Offices of Small and Disadvantaged Business Utilization, and Small Business Development Centers—all of which are available at no cost to the small businesses.

This legislation retains the briefing requirement but modifies the training authorization. Since only PCRs have the ability to protest a procurement and the number of PCRs is limited, the legislation wishes to prioritize providing procurement assistance to small busi-

nesses over functions that other entities are funded and authorized to provide. Thus, the bill clarifies that training only should occur to the extent that it does not interfere with the PCRs carrying out their other statutory responsibilities.

Finally, subsection (h) makes a number of technical corrections. They are: inserting a title of “Training” for the Paragraph (7) enumerator; replacing the term BPCR with PCR; and making additional technical corrections.

Section 102. Small Business Act Contracting Requirements Training

Subsection (a)—Establishment

Subsection (a) adds the requirement that DAU and FAI, each of which is funded to provide training for federal contracting personnel, develop a course on the contracting requirements of the Act.

Subsection (b)—Course Required

Subsection (b) requires that the course established in the prior subsection become a prerequisite to certification as a contracting officer. Currently, the small business training is an elective available to only the most senior contracting personnel. Given that more junior personnel have limited authorities that cap the size of the contracts they can award, they are most often in a position to create opportunities for small businesses. Making this course mandatory should relieve the burden on PCRs, allowing them to focus on procurement assistance, and educate contracting officers on how to ensure small businesses can compete.

Subsection (c)—Requirement that Business Opportunity Specialists Be Certified

BOSs are employees of the SBA who assist small businesses participating in the certain government contracting programs established in the Act. Given this, it makes abundant sense that Subsection (c) requires that Business Opportunity Specialists have at least a Level I Federal Acquisition Certification in contracting, or the equivalent Department of Defense certification. A BOS serving at the date of enactment may continue to serve as a Business Opportunity Specialist for a period of five years without that certification.

Subsection (d)—GAO Report

Subsection (d) requires that the Comptroller General prepare a study for the Committee on the relationship between the size and quality of the acquisition workforce and the federal government’s ability to maximize the utility of small businesses in federal procurement. As the acquisition workforce is responsible for implementing the contracting programs of the Act, the Committee has a strong interest in the health of the acquisition workforce and is concerned with reports that the Executive Branch is not prepared to adapt to members of this corps retiring in the next five years.

Title II—Acquisition Planning

Section 201. Acquisition Planning

Section 15(e)(1) of the Act addresses procurement strategies. It directs agencies to use procurement strategies that facilitate the maximum practicable utilization of small business concerns as prime and subcontractors. Successful procurements that protect the taxpayer's interests have long lead times and require the development of comprehensive acquisition plans⁷ that address issues such as the statement of need and background, potential sources, competition plan, budgeting, timeline, and source selection plan.⁸ All of these have a direct bearing on a small business's opportunity to compete—for example, the manner in which the requirement is defined has a significant bearing on whether it is too large for a small business to compete. Agencies that successfully meet and exceed their small business goals incorporate small business considerations into this process.

Unfortunately, not all agencies operate in this manner. In these cases, the PCR does not see the solicitation until it is ready to be released, and is presented with a work product that may have taken months or years to produce. The PCR must then unwind the process to try to insert opportunities for small business. This leads to a confrontational approach to small business contracting, and adds time to the already lengthy procurement process.

Therefore, the bill amends Section 15(e)(1) to add requirements that each agency enumerate opportunities for small business concerns at each stage of the acquisition planning process, include the PCR and the Office of Small and Disadvantaged Business Utilization in the acquisition planning process, and provide these small business advocates with access to the relevant documents. These changes should lead to a more collaborative approach to small business contracting rather than a confrontational approach, produce better acquisition plans, save agency time and taxpayer money, and create additional opportunities for small businesses.

VIII. UNFUNDED MANDATES

H.R. 3980 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104–1, and would impose no costs on state, local or tribal governments.

IX. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

The Committee does not provide an opinion or estimate with respect to new budget authority, entitlement authority and tax expenditures, as required by clause 3(c)(2) of rule XIII of the House, as the Director of the Congressional Budget Office has not provided a cost estimate pursuant to § 402 of the Congressional Budget Act of 1974.

⁷ See, e.g., GAO, Acquisition Planning: Opportunities to Build Strong Foundations for Better Services Contracts (2011) (GAO–11–672).

⁸ 48 CFR pt. 7 (2012).

X. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3980 are incorporated into the descriptive portions of this report.

XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that authority for this legislation in Art. I, § 8, cls. 1, 3, and 18, and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 3980 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.

XIII. STATEMENT OF NO EARMARKS

Pursuant to cl. 9 of rule XXI of the House, H.R. 3980 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of cl. 9 of rule XXI of the Rules of the House.

XIV. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to cl. 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. 3980 includes a number of provisions designed to improve the competitive viability of small businesses as federal and prime contractors by allowing input from Procurement Center Representatives at the beginning of acquisition, improve the efficiency and effectiveness of the federal contracting process, and agency compliance with the Small Business Act through enhancement training on small business contracting.

XVI. 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

	*	*	*	*	*	*
SEC. 7. (a)	*	*	*			
	*	*	*	*	*	*
(j)(1)	*	*	*			
	*	*	*	*	*	*

(10) There is established with the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclu-

sively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) * * *

* * * * *

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the plan”) as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. *The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the Small Business Opportunity Act of 2012 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification.* The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

* * * * *

SEC. 15. (a) * * *

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(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by [the various agencies] 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) enumerate opportunities for the participation of small business concerns during all acquisition planning processes and in all acquisition plans;

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

(C) invite the participation of the appropriate procurement center representative in all acquisition planning processes and provide that representative access to all acquisition plans in development.

* * * * *

[(1)(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).]

(l) *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) In addition to carrying out the responsibilities assigned by the Administration, a breakout]

(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;]

(A) attend any provisioning conference or similar evaluation session during which a determination may be made with respect to the procurement method to be used to satisfy a requirement, review any acquisition plan with respect to a requirement, and make recommendations regarding procurement method determinations and acquisition plans;

[(B) review, at any time, restrictions on competition]

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

[(C) review restrictions on competition]

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

[(D) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured non-competitively due to the unavailability of such technical data;]

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

[(E) have access to]

(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;

[(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

[(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.]

(F) receive, from personnel responsible for reviewing unsolicited proposals, copies of unsolicited proposals from small business concerns and any information on outcomes relating to such proposals;

(G) participate in any session or planning process and review any documents with respect to a decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(H) have electronic access to any acquisition plan developed or in development with respect to a procurement activity;

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

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

[(3) A breakout procurement center representative]

(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 breakout 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).]

(4) *NOTIFICATION AND INCLUSION.*—A procurement center representative shall be notified of and included in all applicable acquisition planning processes.

[(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

[(i) full-time employees of the Administration; and

[(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

[(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.]

(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 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 the date of enactment of this clause may continue to serve in that position for a period of 5 years without the required certification.

[(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to]

(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.

[(6) For purposes]

(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 [other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative] goods or services, including goods or services that are commercially available.

[(7)(A) 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.]

(7) *TRAINING.*—

(A) *AUTHORIZATION.*—At such times as the Administrator deems appropriate, a procurement center representative

shall provide training for contracting officers, other appropriate personnel of the procurement center to which such representative is assigned, and small businesses groups seeking to do business with such procurement center. Such training shall acquaint the participants with the provisions of this subsection and shall instruct the participants in methods designed to further the purposes of this 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.

[(B) The breakout procurement center representative]

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

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