

Calendar No. 106

114TH CONGRESS
1ST SESSION

S. 958

To amend the Small Business Act to provide for team and joint venture offers for certain contracts.

IN THE SENATE OF THE UNITED STATES

APRIL 15, 2015

Mr. ENZI (for himself and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

JUNE 10, 2015

Reported by Mr. VITTER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Small Business Act to provide for team and joint venture offers for certain contracts.

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.**

4 This Act may be cited as the “Small Business Fair-
5 ness Act”.

1 **SEC. 2. JOINT VENTURING AND TEAMING.**

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

6 “(4) **CONTRACT TEAMING.**—

7 “(A) **IN GENERAL.**—In the case of a solici-
 8 tation of offers for a bundled or consolidated
 9 contract that is issued by the head of an agen-
 10 cy, a small business concern may submit an
 11 offer that provides for use of a particular team
 12 of subcontractors or a joint venture of small
 13 business concerns for the performance of the
 14 contract.

15 “(B) **EVALUATION OF OFFERS.**—The head
 16 of an agency shall evaluate the offer of a team
 17 or a joint venture of small business concerns
 18 submitted under subparagraph (A) in the same
 19 manner as other offers, with due consideration
 20 to the capabilities of all of the proposed sub-
 21 contractors or members of the joint venture.

22 “(i) **TEAMS.**—When evaluating an
 23 offer of a small business prime contractor
 24 that includes a proposed team of sub-
 25 contractors, the head of the agency shall
 26 consider the capabilities and past perform-

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

4 “(ii) JOINT VENTURES.—When evalu-
5 ating an offer of a joint venture of small
6 business concerns, if the joint venture does
7 not have sufficient capabilities or past per-
8 formance to be considered for award of a
9 contract opportunity, the head of the agen-
10 cy shall consider the capabilities and past
11 performance of each member of the joint
12 venture as the capabilities and past per-
13 formance of the joint venture.

14 “(C) STATUS AS A SMALL BUSINESS CON-
15 CERN.—Participation of a small business con-
16 cern in a team or a joint venture under this
17 paragraph shall not affect the status of that
18 concern as a small business concern with re-
19 spect to the performance of a contract described
20 in subparagraph (A).”.

21 (b) TEAM AND JOINT VENTURE OFFERS FOR MUL-
22 TIPLE AWARD CONTRACTS.—Section 15(q)(1) of the
23 Small Business Act (15 U.S.C. 644(q)(1)) is amended—

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

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

3 “(A) IN GENERAL.—Each Federal agen-
4 cy”;

5 (3) by adding at the end the following:

6 “(B) TEAMS.—When evaluating an offer of
7 a small business prime contractor that includes
8 a proposed team of subcontractors for any mul-
9 tiple award contract above the substantial bun-
10 dling threshold of the Federal agency, the head
11 of the Federal agency shall consider the capa-
12 bilities and past performance of each first tier
13 subcontractor that is part of the team as the
14 capabilities and past performance of the offeror.

15 “(C) JOINT VENTURES.—When evaluating
16 an offer of a joint venture of small business
17 concerns for any multiple award contract above
18 the substantial bundling threshold of the Fed-
19 eral agency, if the joint venture does not have
20 sufficient capabilities or past performance to be
21 considered for award of a contract opportunity,
22 the head of the Federal agency shall consider
23 the capabilities and past performance of each
24 member of the joint venture as the capabilities
25 and past performance of the joint venture.

1 “(D) USE OF SMALL BUSINESS TEAMS OR
2 JOINT VENTURES.—

3 “(i) IN GENERAL.—For contracts
4 awarded under section 8(a), 8(m), 15(a),
5 15(j), 31, or 36 to a team of small busi-
6 ness prime contractors and subcontractors
7 or a joint venture of small business con-
8 cerns, the contracting officer shall certify
9 annually to the Administration, for each
10 year the contract is in effect, that each
11 small business concern member of the
12 team or joint venture has the same status
13 of a small business concern, small business
14 concern owned and controlled by service-
15 disabled veterans, qualified HUBZone
16 small business concern, small business con-
17 cern owned and controlled by socially and
18 economically disadvantaged individuals, or
19 small business concern owned and con-
20 trolled by women, as applicable, that such
21 concern had at the time the contract was
22 awarded.

23 “(ii) EXCEPTION.—The requirements
24 of clause (i) shall not apply to a contract
25 awarded to a joint venture of small busi-

1 ness concerns that is a protege under a
2 mentor-protege program approved pursu-
3 ant to section 45.”.

4 (e) RULEMAKING.—Not later than 1 year after the
5 date of enactment of this section, the Administrator of the
6 Small Business Administration shall issue any regulations
7 necessary to carry out the amendments made by this sec-
8 tion.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Small Business Fairness*
11 *Act”.*

12 **SEC. 2. JOINT VENTURING AND TEAMING.**

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

17 “(4) *CONTRACT TEAMING.*—

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

25 “(B) *EVALUATION OF OFFERS.*—

1 “(i) *IN GENERAL.*—The head of an
2 agency shall evaluate the offer of a team or
3 a joint venture of small business concerns
4 submitted under subparagraph (A) in the
5 same manner as other offers, with due con-
6 sideration to the capabilities of all of the
7 proposed subcontractors or members of the
8 joint venture.

9 “(ii) *TEAMS.*—When evaluating an
10 offer of a small business prime contractor
11 that includes a proposed team of sub-
12 contractors, the head of the agency shall
13 consider the capabilities, prior experience,
14 and past performance of the prime con-
15 tractor and each first tier subcontractor
16 that is part of the team as the capabilities,
17 prior experience, and past performance of
18 the team.

19 “(iii) *JOINT VENTURES.*—When evalu-
20 ating an offer of a joint venture of small
21 business concerns, if the joint venture does
22 not have sufficient capabilities, prior expe-
23 rience, or past performance to be considered
24 for award of a contract opportunity, the
25 head of the agency shall consider the capa-

1 abilities, prior experience, and past perform-
 2 ance of each member of the joint venture as
 3 the capabilities, prior experience, and past
 4 performance of the joint venture.

5 “(C) STATUS AS A SMALL BUSINESS CON-
 6 CERN.—Participation of a small business con-
 7 cern in a team or a joint venture under this
 8 paragraph shall not affect the status of that con-
 9 cern as a small business concern with respect to
 10 the performance of a contract described in sub-
 11 paragraph (A).”.

12 (b) TEAM AND JOINT VENTURE OFFERS FOR MUL-
 13 TIPLE AWARD CONTRACTS.—Section 15(q)(1) of the Small
 14 Business Act (15 U.S.C. 644(q)(1)) is amended—

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

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

19 “(A) IN GENERAL.—Each Federal agency”;
 20 and

21 (3) by adding at the end the following:

22 “(B) TEAMS.—When evaluating an offer of
 23 a small business prime contractor that includes
 24 a proposed team of subcontractors for any mul-
 25 tiple award contract above the substantial bun-

1 *dling threshold of the Federal agency, the head of*
2 *the Federal agency shall consider the capabili-*
3 *ties, prior experience, and past performance of*
4 *the prime contractor and each first tier subcon-*
5 *tractor that is part of the team as the capabili-*
6 *ties, prior experience, and past performance of*
7 *the team.*

8 “(C) *JOINT VENTURES.*—*When evaluating*
9 *an offer of a joint venture of small business con-*
10 *cerns for any multiple award contract above the*
11 *substantial bundling threshold of the Federal*
12 *agency, if the joint venture does not have suffi-*
13 *cient capabilities, prior experience, or past per-*
14 *formance to be considered for award of a con-*
15 *tract opportunity, the head of the Federal agency*
16 *shall consider the capabilities, prior experience,*
17 *and past performance of each member of the*
18 *joint venture as the capabilities, prior experi-*
19 *ence, and past performance of the joint venture.*

20 “(D) *USE OF SMALL BUSINESS TEAMS OR*
21 *JOINT VENTURES.*—

22 “(i) *IN GENERAL.*—*For contracts*
23 *awarded under section 8(a), 8(m), 15(a),*
24 *15(j), 31, or 36 to a team of small business*
25 *prime contractors and subcontractors or a*

1 *joint venture of small business concerns, the*
2 *contracting officer shall certify annually to*
3 *the Administration, for each year the con-*
4 *tract is in effect, that each small business*
5 *concern member of the team or joint venture*
6 *has the same status of a small business con-*
7 *cern, small business concern owned and con-*
8 *trolled by service-disabled veterans, quali-*
9 *fied HUBZone small business concern,*
10 *small business concern owned and controlled*
11 *by socially and economically disadvantaged*
12 *individuals, or small business concern*
13 *owned and controlled by women, as appli-*
14 *cable, that such concern had at the time the*
15 *contract was awarded.*

16 “(i) *EXCEPTION.*—*The requirements of*
17 *clause (i) shall not apply to a contract*
18 *awarded to a joint venture of small business*
19 *concerns that is a protege under a mentor-*
20 *protege program approved pursuant to sec-*
21 *tion 45.”.*

22 “(c) *RULEMAKING.*—*Not later than 1 year after the date*
23 *of enactment of this Act, the Administrator of the Small*
24 *Business Administration shall issue any regulations nec-*
25 *essary to carry out the amendments made by this section.*

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