

The Accountability and Clarity in Contracts to Engage Small Suppliers and Small Businesses (ACCESS) Act – Section by Section

Section 1: Short Title

This section titles the bill “Accountability and Clarity in Contracts to Engage Small Suppliers and Small Businesses (ACCESS) Act”

Section 2: Plain Language Requirement in Small Business Communications

Problem: Small businesses, particularly new entrants, face many significant barriers to entry including the threshold issue of finding these opportunities in the first place. Finding the opportunities themselves are difficult when agencies fail to clearly state in their notices to the public their needs/requirements in searchable fields (i.e. the title and description). Rather, agencies may be burying them in attachments to the notice. This wastes valuable time for small businesses seeking these opportunities. Additionally, federal notices are often written in “government-speak” which can be complicated and laden with acronyms and government jargon. Because of the difficulty in understanding easily and simply what the government is seeking, many small businesses are deterred from entering the federal marketplace and those who are interested in relevant opportunities may be unable to find them.

Solution: This section makes federal notices (i.e. solicitations) easier to understand, requiring that they be written in plain language and mandating that key terms of the contract be included in the title or description (searchable fields in SAM.gov).

Section 3: Prioritizing Engaging More Small Businesses in Federal Procurement

Problem: The purpose of the small business goals is to grow small business participation within the federal marketplace by generating opportunity for small contractors. Unfortunately, this goaling structure only incentivizes agencies to meet the dollar goals, which can be manipulated in a number of ways, without taking into consideration the purpose of the goals, namely to grow small business participation. The data shows while dollars awarded to SBCs are increasing, the number of small businesses is decreasing. This decline has negative repercussions on the national economy and defense.

Solution: Creates a new section (B) to the government-wide Small Business Scorecard, the “Composition of the Small Business Industrial Base.” This new section requires the SBA to capture and report critical metrics measuring the health of the small business demographic within the industrial base. It also changes the calculation of the Scorecard, lessening the importance of the dollar goals while also making this new section (B) an essential factor in an agency’s Score calculation. The weight of the dollar value of prime contracts is decreased from 50% to not more than 40%, and the new section (B) is given a weight of not less than 30% of the score. The remainder of the score consists of the other elements of the Scorecard at the Administrator’s discretion (i.e. subcontracting, OSDBU).

To reinforce prioritizing the diversity and growth of small businesses across all sectors of the industrial base, this section also states specifically that, in meeting the SB goals, the government must ensure the participation of a broad spectrum of small businesses from across a wide variety of industries.

Section 4: Limitation on Federal Agency Credit for Meeting Small Business Contracting Goals

Problem: Agencies appear to be “meeting” their socioeconomic small business goals, but this is misleading since agencies are able to count the total value of a contract towards multiple socioeconomic goals, otherwise known as “double-counting” or “double-dipping”. This allows agencies to meet their goals faster, disincentivizing them using the SBA’s contracting programs and from contracting further with these socioeconomic small business groups once the goals have been “met”.

Solution: This section limits this “double-counting” exercise by limiting an agency’s ability to count the total contract award value two times only. First, the contract award may be counted toward the agency’s overall small business goal, and second, towards the applicable goal under which the contract was awarded (i.e. if the contract was awarded as a WOSB set-aside, the contract dollar value will go towards the WOSB goal). If the agency did not award the contract through any of SBA’s small business contracting programs, the agency may choose, at its discretion, which socioeconomic goal to allocate the contract value long as that status is held by the small business awardee.

Section 5: Testimony on Small Business Engagement before Congress

Problem: Small businesses have long held the concern that agencies suffer no consequence for failing to meet their statutory small business goals. The lack of consequences contributes to agencies inability to meet the goals.

Solution: This section holds federal agencies accountable to contracting with small businesses by requiring that any agency failing to receive a score equivalent to a letter grade of “A” or better on their Scorecard submit a remediation plan to Congress detailing its plan to improve its score in the next fiscal year, and testify before the House and Senate Committees on Small Business as to the reasons for their score and remediation plan. The bill does not specify which federal agency employee, however if this language proceeds through the lawmaking process, there is opportunity to specify that the agency employee to testify should be the chief acquisition officer or equivalent.

Section 6: Small Business Assessment in Evaluating Offers

Problem: While subcontracting plans are an important part of the pre-award process, it is unfortunately paid little attention post-award. This disadvantages the small businesses dependent on these subcontracting opportunities arising from the subcontracting plans to materialize. This lack of attention post-award also fails to hold prime contractors accountable for their small business subcontracting achievements.

Solution: This section holds large prime contractors accountable to subcontracting with small business by requiring contracting officers to take into consideration, when evaluating offers on a contract in which subcontracting will be utilized, the large prime contractor’s past use of small businesses as subcontractors (its previous subcontracting plan achievements) and its intended utilization of small businesses as subcontractors for the contract under consideration.

Section 7: Rule of Two Analysis Applies Before Using a Multiple-Award Contract

Problem: Agencies may be seeking ways to circumvent the Rule of Two, such as the Army in *Tolliver Grp., Inc. vs. United States*. This disadvantages small businesses reliant on this important rule for agencies to properly set aside contract requirements to small businesses. The Rule of Two is established law, and Congress’s intent is to reaffirm this important statutory requirement.

Solution: This section codifies the Court of Federal Claims holding in *Tolliver Grp., Inc. vs. United States*, affirming that agencies are required to apply the “Rule of Two” to all federal acquisitions including when deciding to procure using a multiple-award contract as in 15 USC 644(r).

Section 8: Aligning OSDBU and PCR Collaboration Regarding Bundled or Consolidated Contracts

Problem: Because of federal efforts underway to increase contract consolidation and bundling activity (i.e. category management), and general trends in that direction regardless of category management, the role of the Procurement Center Representative (PCR) is ever more critical. PCR’s are overworked, overburdened, and often feel they lack power to affect change within the agencies they are embedded. The OSDBU are offices at each federal agency dedicated to advocating for small businesses

within the agency they operate. While statute does require both entities to identify and contest contract consolidation and bundling efforts, statute is unclear as to the interaction between the two.

Solution: This section amends the Office of Small and Disadvantaged Business Utilization (OSDBU) and Procurement Center Representative (PCR) statutes to strengthen the relationship and collaboration between the two groups of small business advocates, specifically requiring the OSDBU to work with the PCR when proposed solicitations involving significant bundling or consolidation are identified. OSDBU are also required to inform the PCR if they receive notice from a small business concern of any undue restriction of the ability of the small business concern to compete for award due to contract bundling or consolidation activity. Aligning changes are made to the PCR statutory language.