

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend title 10, United States Code, to restrict bundling of Department of Defense contract requirements that unreasonably disadvantages small businesses.

**IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.**

**S. 1050**

To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. COLLINS

Viz:

1 On page 222, between the matter following line 12  
2 and line 13, insert the following:

3 **SEC. 866. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

4 (a) AMENDMENT TO TITLE 10.—(1) Chapter 141 of  
5 title 10, United States Code, is amended by inserting after  
6 section 2381 the following new section:

1 **“§ 2382. Consolidation of contract requirements: pol-**  
2 **icy and restrictions**

3 “(a) POLICY.—The Secretary of Defense shall re-  
4 quire the Secretary of each military department, the head  
5 of each Defense Agency, and the head of each Department  
6 of Defense Field Activity to ensure that the decisions  
7 made by that official regarding consolidation of contract  
8 requirements of the department, agency, or field activity,  
9 as the case may be, are made with a view to providing  
10 small business concerns with appropriate opportunities to  
11 participate in Department of Defense procurements as  
12 prime contractors and appropriate opportunities to par-  
13 ticipate in such procurements as subcontractors.

14 “(b) LIMITATION ON USE OF ACQUISITION STRATE-  
15 GIES INVOLVING CONSOLIDATION.—(1) An official of a  
16 military department, Defense Agency, or Department of  
17 Defense Field Activity may not execute an acquisition  
18 strategy that includes a consolidation of contract require-  
19 ments of the military department, agency, or activity with  
20 a total value in excess of \$5,000,000, unless the senior  
21 procurement executive concerned first—

22 “(A) conducts market research;

23 “(B) identifies any alternative contracting ap-  
24 proaches that would involve a lesser degree of con-  
25 solidation of contract requirements; and

1           “(C) determines that the consolidation is nec-  
2           essary and justified.

3           “(2) A senior procurement executive may determine  
4 that an acquisition strategy involving a consolidation of  
5 contract requirements is necessary and justified for the  
6 purposes of paragraph (1) if the benefits of the acquisition  
7 strategy substantially exceed the benefits of each of the  
8 possible alternative contracting approaches identified  
9 under subparagraph (B) of that paragraph. However, sav-  
10 ings in administrative or personnel costs alone do not con-  
11 stitute, for such purposes, a sufficient justification for a  
12 consolidation of contract requirements in a procurement  
13 unless the total amount of the cost savings is expected  
14 to be substantial in relation to the total cost of the pro-  
15 curement.

16           “(3) Benefits considered for the purposes of para-  
17 graphs (1) and (2) may include cost and, regardless of  
18 whether quantifiable in dollar amounts—

19           “(A) quality;

20           “(B) acquisition cycle;

21           “(C) terms and conditions; and

22           “(D) any other benefit.

23           “(c) DEFINITIONS.—In this section:

24           “(1) The terms ‘consolidation of contract re-  
25           quirements’ and ‘consolidation’, with respect to con-

1       tract requirements of a military department, De-  
2       fense Agency, or Department of Defense Field Activ-  
3       ity, mean a use of a solicitation to obtain offers for  
4       a single contract or a multiple award contract to sat-  
5       isfy two or more requirements of that department,  
6       agency, or activity for goods or services that have  
7       previously been provided to, or performed for, that  
8       department, agency, or activity under two or more  
9       separate contracts smaller in cost than the total cost  
10      of the contract for which the offers are solicited.

11           “(2) The term “multiple award contract”  
12      means—

13                   “(A) a contract that is entered into by the  
14                   Administrator of General Services under the  
15                   multiple award schedule program referred to in  
16                   section 2302(2)(C) of this title;

17                   “(B) a multiple award task order contract  
18                   or delivery order contract that is entered into  
19                   under the authority of sections 2304a through  
20                   2304d of this title or sections 303H through  
21                   303K of the Federal Property and Administra-  
22                   tive Services Act of 1949 (41 U.S.C. 253h  
23                   through 253k); and

24                   “(C) any other indeterminate delivery, in-  
25                   determinate quantity contract that is entered

1 into by the head of a Federal agency with two  
2 or more sources pursuant to the same sollicita-  
3 tion.

4 “(3) The term ‘senior procurement executive  
5 concerned’ means—

6 “(A) with respect to a military department,  
7 the official designated under section 16(3) of  
8 the Office of Federal Procurement Policy Act  
9 (41 U.S.C. 414(3)) as the senior procurement  
10 executive for the military department; or

11 “(B) with respect to a Defense Agency or  
12 a Department of Defense Field Activity, the of-  
13 ficial so designated for the Department of De-  
14 fense.

15 “(4) The term ‘small business concern’ means  
16 a business concern that is determined by the Admin-  
17 istrator of the Small Business Administration to be  
18 a small-business concern by application of the stand-  
19 ards prescribed under section 3(a) of the Small  
20 Business Act (15 U.S.C. 632(a)).”.

21 (2) The table of sections at the beginning of such  
22 chapter is amended by inserting after the item relating  
23 to section 2381 the following new item:

“2382. Consolidation of contract requirements: policy and restrictions.”.

24 (b) DATA REVIEW.—(1) The Secretary of Defense  
25 shall revise the data collection systems of the Department

1 of Defense to ensure that such systems are capable of  
2 identifying each procurement that involves a consolidation  
3 of contract requirements within the department with a  
4 total value in excess of \$5,000,000.

5 (2) The Secretary shall ensure that appropriate offi-  
6 cials of the Department of Defense periodically review the  
7 information collected pursuant to paragraph (1) in co-  
8 operation with the Small Business Administration—

9 (A) to determine the extent of the consolidation  
10 of contract requirements in the Department of De-  
11 fense; and

12 (B) to assess the impact of the consolidation of  
13 contract requirements on the availability of opportu-  
14 nities for small business concerns to participate in  
15 Department of Defense procurements, both as prime  
16 contractors and as subcontractors.

17 (3) In this subsection:

18 (A) The term “consolidation of contract re-  
19 quirements” has the meaning given that term in sec-  
20 tion 2382(c)(1) of title 10, United States Code, as  
21 added by subsection (a).

22 (B) The term “small business concern” means  
23 a business concern that is determined by the Admin-  
24 istrator of the Small Business Administration to be  
25 a small-business concern by application of the stand-

1       ards prescribed under section 3(a) of the Small  
2       Business Act (15 U.S.C. 632(a)).