CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 4, 2017

H.R. 2594
Small Business Payment for Performance Act of 2017

As ordered reported by the House Committee on Small Business on June 15, 2017

SUMMARY

H.R. 2594 would accelerate the timing of certain payments to contractors from federal agencies. Under current law, if federal contracting officers change contract terms that affect the cost of performance then the government is required to adjust the contract's price accordingly upon request of the contractor. Such requests are known as a request for equitable adjustment (REA). The equitable adjustment is paid to the contractor after the agency issues a formal change order and an invoice is submitted for the completed work. H.R. 2594 would expedite those payments.

The bill also would require federal agencies to report annually on construction contracts they award to small businesses and any modifications made to such contracts. The Small Business Administration (SBA) would be required to annually compile and summarize those reports. Based on an analysis of information from several of the affected agencies, CBO estimates that implementing the bill would cost $83 million over the 2018-2022 period.

Enacting H.R. 2594 would affect spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be less than $500,000. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2594 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2594 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of H.R. 2594 is shown in the following table. The costs of this legislation fall within all budget functions that include expenditures on contracts with small businesses.

	By Fiscal Year, in Millions of Dollars					
	2018	2019	2020	2021	2022	2018-2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Shifting of Contractor Payments						
Estimated Authorization Level	0	0	0	0	0	0
Estimated Outlays	45	*	*	*	*	45
Reporting Requirement Costs						
Estimated Authorization Level	1	35	1	1	1	38
Estimated Outlays	*	27	9	1	1	38
Total Increases						
Estimated Authorization Level	1	35	1	1	1	38
Estimated Outlays	45	27	9	1	1	83

Notes: * = between zero and $500,000; numbers may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in 2017, that spending for accelerated payments to contractors would come from amounts appropriated in the same year that contract modifications are made and that the necessary amounts will be appropriated for each fiscal year. Outlay estimates are based on CBO's judgment regarding the value and timing of accelerated payments made to contractors under the bill as well as historical spending on similar activities.

Shifting of Contractor Payments

Under current law, federal contracting officers that change the terms of contracts in ways that affect the costs of performing such contracts are required to adjust the contract's price accordingly upon request of the contractor. Broadly speaking, negotiations between contractors and agency contracting officers regarding the scope of the changes to a contract and the cost of modifications can proceed in two ways: a bilateral agreement may be reached in which the two parties negotiate and agree upon the exact change in scope and costs before work proceeds or a unilateral change is issued by the contracting officer. In the latter situation, the contracting officer issues a directive to perform the work required by the contract change at a cost determined by the contracting officer without the agreement of the contractor. The contractor may then submit an REA for any additional costs incurred beyond what was set forth in the unilateral modification. In each situation the equitable adjustment is paid to the contractor after the agency issues a formal change order and an invoice is submitted for the work completed.

When a unilateral change is made by the contracting officer, H.R. 2594 would require agencies to provide at least 50 percent of the contractor's estimated costs of an equitable adjustment to a construction contract awarded to a small business concern upon receipt of such a request and an invoice for the completed work from the contractor.

Implementing H.R. 2594 would accelerate the timing of when payments are made for equitable adjustments by contracting agencies. In 2016, about $15 billion was obligated for small business construction contracts. Based on an analysis of information from the SBA and General Services Administration (GSA), CBO estimates that 50 percent of small business construction contracts would involve a request for an equitable adjustment, that half of those requests would stem from a unilateral contract change, and that the value of the average REA would be 10 percent of the total contract cost. The annual costs of and speed at which those payments are made to contractors depends on many factors, such as the relationship between the contractor and contracting officer, the scope of the change in the contract, and the schedule for completing the contract. CBO estimates that on average, H.R. 2594 would shift payments for REAs forward by three months, shifting $45 million in payments to 2018 that would otherwise have been paid in 2019. For years after 2018, the reduced outlays from moving payments into the previous fiscal year would be offset by new payments moving from the subsequent year.

Reporting Requirement Costs

H.R. 2594 would require agencies to annually report on construction contracts they award to small businesses and any modifications made to such contracts. The SBA would be required to annually compile and summarize those reports. Based on an analysis of information from the SBA and GSA, CBO estimates implementing the bill would cost $38 million over the 2018-2022 period primarily for GSA to update the Federal Procurement Database System and for agencies to update 185 contracting software systems government-wide, at an average cost of about $188,000 per update, to collect and report equitable adjustment data to the SBA; such spending would be subject to the availability of appropriated funds.

H.R. 2594 also would direct the General Accountability Office (GAO) to assess the impact of the proposed bill on small businesses performing construction contracts and the process of requesting equitable adjustments. Based on the costs of similar reports conducted by GAO, CBO estimates that the costs to report on these activities would not be significant.

Additional Contract Costs

Based on information from the SBA and GSA, CBO estimates that implementing the bill could affect both the volume of requests for equitable adjustments that agencies receive and the net costs of such payments by creating greater certainty in the timing and amount of payments that they may receive; however, CBO has no basis for estimating such budgetary effects.

PAY-AS-YOU-GO CONSIDERATIONS

Enacting H.R. 2594 would affect spending by agencies not funded through annual appropriations for costs to comply with new reporting requirements and for any payments made to contractors in the 2018-2027 period that otherwise would have occurred outside of that period; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be less than $500,000. Enacting H.R. 2594 would not affect revenues.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting H.R. 2594 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2594 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

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