

110TH CONGRESS
1ST SESSION

H. R. 3867

AN ACT

To update and expand the procurement programs of the Small Business Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Small Business Contracting Program Improvements
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENSURING GOVERNMENT CONTRACT OPPORTUNITIES
FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED
BY SERVICE-DISABLED VETERANS

- Sec. 101. Expanding procurement opportunities.
- Sec. 102. Penalties for misrepresentation.
- Sec. 103. Implementation of Executive Order No. 13360.
- Sec. 104. Priority for severely disabled veterans.

TITLE II—PROTECTING TAXPAYERS AND ENSURING PROGRAM
CONSISTENCY

- Sec. 201. Requiring business integrity of small business concerns.
- Sec. 202. Establishment of goals.
- Sec. 203. Small business concern subcontracting policy.
- Sec. 204. Increased size of available contracts.
- Sec. 205. Expanding protest authorization.
- Sec. 206. Prohibition on contract awards to contractors in violation of immigration laws.

TITLE III—EXPANDING OPPORTUNITIES FOR WOMEN
ENTREPRENEURS

- Sec. 301. Implement the women’s procurement program.

TITLE IV—STRENGTHENING COMMUNITY DEVELOPMENT

- Sec. 401. On-site verification.
- Sec. 402. Limitation on construction contracts.
- Sec. 403. Study on effectiveness of HUBZone program in reaching rural areas.

TITLE V—MODERNIZING THE 8(a) PROGRAM

- Sec. 501. Modernizing the section 8(a) program net worth limitations.
- Sec. 502. Extension of the section 8(a) program term.
- Sec. 503. Report on implementation.
- Sec. 504. Assistance study.
- Sec. 505. Examination of list of groups the members of which are presumed to be socially disadvantaged for purposes of small disadvantaged business program.

TITLE VI—OTHER MATTERS

Sec. 601. Affiliation for certain franchises.

Sec. 602. Sense of the House of Representatives on acquisitions conducted under the General Services Administration's Federal Supply Schedule.

Sec. 603. Study on frivolous protests.

Sec. 604. Small Business Administration Liaison.

Sec. 605. Prohibition on business-class or first-class airline travel.

1 **TITLE I—ENSURING GOVERN-**
 2 **MENT CONTRACT OPPORTU-**
 3 **NITIES FOR SMALL BUSINESS**
 4 **CONCERNS OWNED AND CON-**
 5 **TROLLED BY SERVICE-DIS-**
 6 **ABLED VETERANS**

7 **SEC. 101. EXPANDING PROCUREMENT OPPORTUNITIES.**

8 (a) SERVICE-DISABLED VETERANS.—Section 36(a)
 9 of the Small Business Act (15 U.S.C. 657f(a)) is amend-
 10 ed—

11 (1) in the matter preceding paragraph (1), by
 12 striking “may” and inserting “shall”; and

13 (2) in paragraph (1), by striking “and the con-
 14 tracting officer” and all that follows through “con-
 15 tracting opportunity”.

16 (b) HUBZONE.—Section 31(b)(2)(B) of such Act
 17 (15 U.S.C. 657a(b)(2)(B)) is amended by striking “shall”
 18 and inserting “may”.

19 **SEC. 102. PENALTIES FOR MISREPRESENTATION.**

20 Section 16(d)(1) of the Small Business Act (15
 21 U.S.C. 645(d)(1)) is amended by inserting “a ‘small busi-
 22 ness concern owned and controlled by service-disabled vet-

1 erans’,” before “or a ‘small business concern owned and
2 controlled by women’”.

3 **SEC. 103. IMPLEMENTATION OF EXECUTIVE ORDER NO.**
4 **13360.**

5 Section 36 of the Small Business Act (15 U.S.C.
6 657f) is amended by adding at the end the following new
7 subsection:

8 “(f) IMPLEMENTATION OF EXECUTIVE ORDER NO.
9 13360.—The Administrator shall—

10 “(1) provide small business concerns owned and
11 controlled by service-disabled veterans with informa-
12 tion and assistance concerning participation in Fed-
13 eral contracting;

14 “(2) advise and assist other agencies in their
15 strategies to expand procurement opportunities for
16 such concerns; and

17 “(3) make training assistance on Federal con-
18 tract law, procedures, and practices available to such
19 concerns.”.

20 **SEC. 104. PRIORITY FOR SEVERELY DISABLED VETERANS.**

21 In developing regulations to implement section 101,
22 the Administrator shall give a priority to those certified
23 service-disabled veterans that are severely disabled.

1 **TITLE II—PROTECTING TAX-**
2 **PAYERS AND ENSURING PRO-**
3 **GRAM CONSISTENCY**

4 **SEC. 201. REQUIRING BUSINESS INTEGRITY OF SMALL**
5 **BUSINESS CONCERNS.**

6 Section 8 of the Small Business Act (15 U.S.C. 637)
7 is amended by adding at the end the following new sub-
8 section:

9 “(o) REQUIREMENT OF BUSINESS INTEGRITY.—No
10 small business concern may receive any benefit under sec-
11 tion 8(a), 8(m), 31(b)(2)(A), 31(b)(2)(B), 36(a), or 36(b)
12 unless the Administrator first performs a background
13 check on the owners and officers of such small business
14 concern and determines that the owners and officers do
15 not lack business integrity. For purposes of such a deter-
16 mination, previous criminal convictions will create a pre-
17 sumption of a lack of business integrity.”.

18 **SEC. 202. ESTABLISHMENT OF GOALS.**

19 (a) ESTABLISHMENT OF GOVERNMENT-WIDE
20 GOALS.—Section 15(g)(1) of the Small Business Act (15
21 U.S.C. 644(g)(1)) is amended by striking the first sen-
22 tence and inserting “The President shall annually estab-
23 lish Government-wide goals for procurement contracts
24 awarded to small business concerns, small business con-
25 cerns owned and controlled by service-disabled veterans,

1 qualified HUBZone small business concerns, small busi-
2 ness concerns owned and controlled by socially and eco-
3 nomically disadvantaged individuals, small business con-
4 cerns participating in the program established by section
5 8(a), and small business concerns owned and controlled
6 by women.”.

7 (b) TECHNICAL CORRECTIONS.—Section 15 of the
8 Small Business Act (15 U.S.C. 644) is amended—

9 (1) in subsection (g) by adding at the end the
10 following:

11 “(3) Each agency shall, in consultation with the Ad-
12 ministrator, establish goals for the usage, as prime con-
13 tractors, of small business concerns that participate in the
14 program under section 8(a).”; and

15 (2) in subsection (h) by adding at the end the
16 following:

17 “(4) Each prime contractor shall, in consultation
18 with the Administrator, establish goals for the usage, as
19 subcontractors, of small business concerns that participate
20 in the program under section 8(a).”.

21 **SEC. 203. SMALL BUSINESS CONCERN SUBCONTRACTING**
22 **POLICY.**

23 Section 8(d)(1) of the Small Business Act (15 U.S.C.
24 637(d)(1)) is amended by striking the first sentence and
25 inserting “It is the policy of the United States that small

1 business concerns, small business concerns owned and con-
2 trolled by veterans, small business concerns owned and
3 controlled by service-disabled veterans, qualifying
4 HUBZone small business concerns, small business con-
5 cerns owned and controlled by socially and economically
6 disadvantaged individuals, small business concerns partici-
7 pating in the program established by section 8(a), and
8 small business concerns owned and controlled by women,
9 shall have the maximum practicable opportunity to partici-
10 pate in the performance contracts let by any Federal agen-
11 cy, including contracts and subcontracts for subsystems,
12 assemblies, components, and related services for major
13 systems.”.

14 **SEC. 204. INCREASED SIZE OF AVAILABLE CONTRACTS.**

15 (a) SECTION 8(a) PROGRAM.—Section
16 8(a)(1)(D)(i)(II) of the Small Business Act (15 U.S.C.
17 637(a)(1)(D)(i)(II)) is amended—

18 (1) by striking “\$5,000,000” and inserting
19 “\$5,500,000”; and

20 (2) by striking “\$3,000,000” and inserting
21 “\$5,100,000”.

22 (b) HUBZONE PROGRAM.—Section 31(b)(2)(A)(ii)
23 of such Act (15 U.S.C. 657a(b)(2)(A)(ii)) is amended—

24 (1) by striking “\$5,000,000” and inserting
25 “\$5,500,000”; and

1 (2) by striking “\$3,000,000” and inserting
2 “\$5,100,000”.

3 (c) SERVICE-DISABLED VETERAN PROGRAM.—Sec-
4 tion 36(a)(2) of such Act (15 U.S.C. 657f(a)(2)) is
5 amended—

6 (1) by striking “\$5,000,000” and inserting
7 “\$5,500,000”; and

8 (2) by striking “\$3,000,000” and inserting
9 “\$5,100,000”.

10 **SEC. 205. EXPANDING PROTEST AUTHORIZATION.**

11 Section 8(a) of the Small Business Act (15 U.S.C.
12 637(a)) is amended by adding at the end the following
13 new paragraphs:

14 “(22) Rules similar to the rules of paragraphs
15 (5) and (6) of subsection (m) shall apply for pur-
16 poses of this subsection.

17 “(23) For the purposes of challenging the eligi-
18 bility of a small business concern to receive an
19 award under section 8(a), 8(m), 31(b)(2)(A),
20 31(b)(2)(B), 36(a), or 36(b), the term ‘interested
21 party’ shall include any small business concern.”.

1 **SEC. 206. PROHIBITION ON CONTRACT AWARDS TO CON-**
2 **TRACTORS IN VIOLATION OF IMMIGRATION**
3 **LAWS.**

4 Any employer found, based on a determination by the
5 Secretary of Homeland Security or the Attorney General
6 to have engaged in a pattern or practice of hiring, recruit-
7 ing or referring for a fee, for employment in the United
8 States an alien knowing the person is an unauthorized
9 alien shall be subject to debarment from the receipt of fu-
10 ture Federal contracts under this Act.

11 **TITLE III—EXPANDING OPPOR-**
12 **TUNITIES FOR WOMEN EN-**
13 **TREPRENEURS**

14 **SEC. 301. IMPLEMENT THE WOMEN'S PROCUREMENT PRO-**
15 **GRAM.**

16 Subsection (m) of section 8 of the Small Business Act
17 (15 U.S.C. 637(m)) is amended—

18 (1) by striking paragraphs (1) through (4) and
19 inserting the following:

20 “(1) DEFINITION.—In this subsection, the term
21 ‘small business concern owned and controlled by
22 women’ has the meaning given such term in section
23 3(n), except that ownership shall be determined
24 without regard to any community property law.

25 “(2) AUTHORITY TO RESTRICT COMPETITION.—

1 “(A) IN GENERAL.—In accordance with
2 this subsection, a contracting officer may re-
3 strict competition for any contract for the pro-
4 curement of goods or services by the Federal
5 Government to small business concerns owned
6 and controlled by women, if—

7 “(i) each of the concerns is not less
8 than 51 percent owned by 1 or more
9 women who are economically disadvan-
10 taged (and such ownership is determined
11 without regard to any community property
12 law);

13 “(ii) the contracting officer has a rea-
14 sonable expectation that 2 or more small
15 business concerns owned and controlled by
16 women will submit offers for the contract;

17 “(iii) the contract is for the procure-
18 ment of goods or services with respect to
19 an industry identified pursuant to para-
20 graph (4);

21 “(iv) in the estimation of the con-
22 tracting officer, the contract award can be
23 made at a fair and reasonable price; and

24 “(v) each concern is certified in a
25 manner described in subparagraph (B).

1 “(B) ACCEPTANCE OF CERTIFICATION.—
2 For purposes of subparagraph (A)(v), a con-
3 tracting officer is required to accept a small
4 business concern’s certification as a small busi-
5 ness concern owned and controlled by women
6 when such certification is made by—

7 “(i) a Federal agency or a State or
8 local government;

9 “(ii) a national certifying entity ap-
10 proved by the Administrator; or

11 “(iii) the small business concern,
12 when such concern certifies to the con-
13 tracting officer that it is a small business
14 concern owned and controlled by women
15 and provides adequate documentation in
16 accordance with standards established by
17 the Administrator to support such certifi-
18 cation.

19 “(3) WAIVER.—With respect to a small busi-
20 ness concern owned and controlled by women, the
21 Administrator may waive paragraph (2)(A)(i) if—

22 “(A) such concern is in an industry identi-
23 fied pursuant to paragraph (4); and

24 “(B) the Administrator determines that
25 such concern is in an industry in which small

1 business concerns owned and controlled by
2 women are substantially under-represented in
3 Federal contracting.

4 “(4) IDENTIFICATION OF INDUSTRIES.—

5 “(A) IN GENERAL.—Not less often than
6 every five years, the Administrator shall con-
7 duct a study to identify, for purposes of para-
8 graphs (2)(A)(iii) and (3)(A), industries in
9 which small business concerns owned and con-
10 trolled by women are under-represented in Fed-
11 eral contracting. The parameters for the study
12 shall be as follows:

13 “(i) For purposes of this paragraph,
14 the Administrator shall identify an indus-
15 try if, and only if, the share of Federal
16 contracts awarded to small business con-
17 cerns owned and controlled by women in
18 such industry is small relative to the prev-
19 alence of business concerns owned and con-
20 trolled by women in the pool of business
21 concerns in such industry that have at
22 least one employee.

23 “(ii) The study shall measure utiliza-
24 tion and availability by—

1 “(I) using the two best available
2 data sources;

3 “(II) including only business con-
4 cerns that have at least one employee;
5 and

6 “(III) measuring only Federal
7 contracts awarded for amounts over
8 \$25,000.

9 “(iii) The study shall include four sets
10 of disparity measurement tables to com-
11 pute disparity ratios. The four sets are—

12 “(I) all business concerns in the
13 United States relative to the number
14 of Federal contracts awarded to small
15 business concerns owned and con-
16 trolled by women;

17 “(II) small business concerns
18 owned and controlled by women that
19 have demonstrated an interest in or
20 that have secured Federal contracts
21 relative to the number of Federal con-
22 tracts awarded to small business con-
23 cerns owned and controlled by women;

24 “(III) all business concerns in
25 the United States relative to the dol-

1 lar amounts of Federal contracts
2 awarded to small business concerns
3 owned and controlled by women; and

4 “(IV) small business concerns
5 owned and controlled by women that
6 have demonstrated an interest in or
7 that have secured government con-
8 tracts relative to the dollar amounts
9 of Federal contracts awarded.

10 “(B) UNDERREPRESENTED INDUSTRIES.—

11 Until such time as the Administrator completes
12 the identification of industries required by sub-
13 paragraph (A), the following industries, as iden-
14 tified by their 2-Digit North American Industry
15 Classification System Code, are deemed under-
16 represented by women in Federal contracting:
17 11 (Forestry), 21 (Mining), 22 (Utilities), 23
18 (Construction), 31 (Manufacturing), 32 (Manu-
19 facturing), 33 (Manufacturing), 42 (Wholesale
20 Trade), 44 (Retail Trade), 45 (Retail Trade),
21 48 (Transportation), 49 (Transportation), 51
22 (Information), 52 (Finance and Insurance), 53
23 (Real Estate and Rental and Leasing), 54 (Pro-
24 fessional, Scientific, and Technical Services), 56
25 (Administrative and Support, Waste Manage-

1 ment, and Remediation Services), 61 (Edu-
2 cation Services), 62 (Health Care and Social
3 Assistance), 71 (Arts, Entertainment, and
4 Recreation), 72 (Accommodation and Food
5 Services), and 81 (Other Services).

6 “(C) DEADLINE.—Not later than 90 days
7 after the date of the enactment of this subpara-
8 graph, the Administrator shall—

9 “(i) ensure the completion of the first
10 study required by subparagraph (A);

11 “(ii) approve national certifying enti-
12 ties for the purposes of paragraph
13 (2)(B)(ii);

14 “(iii) establish procedures required by
15 paragraph (5)(A); and

16 “(iv) establish standards described in
17 paragraph (2)(B)(iii).”;

18 (2) in paragraph (5), by striking “(2)(F)” in
19 each place it appears and inserting “(2)(B)”; and

20 (3) in paragraph (5), by adding at the end the
21 following new subparagraph:

22 “(D) PROTESTS BY SMALL BUSINESS CON-
23 CERNS.—For purposes of this paragraph, the
24 term ‘interested party’ shall include any small
25 business concern.”.

1 **TITLE IV—STRENGTHENING**
2 **COMMUNITY DEVELOPMENT**

3 **SEC. 401. ON-SITE VERIFICATION.**

4 Section 31(b) of the Small Business Act (15 U.S.C.
5 657a(b)) is amended by adding at the end the following:

6 “(5) ON-SITE VERIFICATION OF STATUS.—

7 “(A) VERIFICATION.—When a small busi-
8 ness concern that has previously been awarded
9 a contract under paragraph (2)(A) or (2)(B) is
10 to be awarded a second contract under para-
11 graph (2)(A) or (2)(B), the Administrator shall
12 perform an on-site inspection to determine
13 whether such small business concern is a quali-
14 fied HUBZone small business concern. This
15 paragraph does not require such an inspection
16 before the award of a third or subsequent con-
17 tract. This paragraph does not prevent a second
18 contract from being awarded before such in-
19 spection is completed.

20 “(B) NOTIFICATION BY SMALL BUSINESS
21 CONCERN.—The Administrator shall require a
22 small business concern to notify the Adminis-
23 trator, prior to being awarded a second contract
24 under paragraph (2)(A) or (2)(B), of such busi-
25 ness concern’s attempt to be awarded a second

1 contract under paragraph (2)(A) or (2)(B). Not
2 later than 90 days after the date of the enact-
3 ment of this subparagraph, the Administrator
4 shall establish procedures to implement this
5 subparagraph.”.

6 **SEC. 402. LIMITATION ON CONSTRUCTION CONTRACTS.**

7 Section 31(b) of the Small Business Act (15 U.S.C.
8 657a(b)) is amended by adding at the end the following:

9 “(6) LIMIT HUBZONE PROGRAM CONSTRUCTION
10 CONTRACTS IN OR NEAR A HUBZONE.—A small busi-
11 ness concern may not obtain a construction contract
12 by reason of the HUBZone program unless the con-
13 struction project is located in or near the HUBZone
14 in which the small business concern has its principal
15 place of business. The Administrator shall prescribe
16 standards for determining when a project is located
17 ‘near’ a HUBZone for purposes of this paragraph,
18 except that under no circumstances can a project lo-
19 cated more than 150 miles from a HUBZone be lo-
20 cated ‘near’ that HUBZone.”.

21 **SEC. 403. STUDY ON EFFECTIVENESS OF HUBZONE PRO-**
22 **GRAM IN REACHING RURAL AREAS.**

23 The Administrator of the Small Business Administra-
24 tion shall carry out a study on the effectiveness of the
25 HUBZone program in reaching rural areas to determine

1 whether there are needy areas that do not qualify under
2 the program and whether there are areas that currently
3 qualify under the program that are inconsistent with the
4 program's original intent. Not later than 6 months after
5 the date of the enactment of this Act, the Administrator
6 shall submit to Congress a report containing the results
7 of the study and any recommendations that the Adminis-
8 trator considers appropriate for alternative ways to evalu-
9 ate eligibility for HUBZones in rural areas.

10 **TITLE V—MODERNIZING THE**
11 **8(a) PROGRAM**

12 **SEC. 501. MODERNIZING THE SECTION 8(a) PROGRAM NET**
13 **WORTH LIMITATIONS.**

14 (a) MODIFICATIONS TO 8(a) PROGRAM.—Notwith-
15 standing any provision of the Small Business Act (15
16 U.S.C. 631 et seq.), the Administrator shall administer
17 the program under section 8(a) of such Act with the fol-
18 lowing modifications:

19 (1) DETERMINATION FOR TERM OF PRO-
20 GRAM.—For the purpose of this section, an indi-
21 vidual who has been determined by the Adminis-
22 trator to be economically disadvantaged at the time
23 of program entry shall be deemed to be economically
24 disadvantaged for the term of the program.

1 (2) MATTERS EXCLUDED.—In determining per-
2 sonal net worth, the Administrator shall exclude
3 from such determination the following:

4 (A) The value of any investment of an eco-
5 nomically disadvantaged owner in the small
6 business concern, except that such value shall
7 be taken into account under this paragraph
8 when comparing such concerns to other con-
9 cerns in the same business area that are owned
10 by other than socially disadvantaged individ-
11 uals.

12 (B) The equity of an economically dis-
13 advantaged owner in a primary personal resi-
14 dence.

15 (3) MAXIMUM NET WORTH.—When considering
16 an individual's net worth for the purpose of deter-
17 mining the degree of diminished credit and capital
18 opportunities of such individual, the Administrator
19 shall consider an individual net worth of \$550,000
20 or less as tending to show diminished credit and
21 capital opportunities.

22 (b) EFFECTIVE DATE FOR MODIFICATIONS TO THE
23 8(a) PROGRAM.—This section shall apply with respect to
24 small business concerns that apply to the program under

1 section 8(a) of the Small Business Act (15 U.S.C. 637(a))
2 after the date of the enactment of this Act.

3 **SEC. 502. EXTENSION OF THE SECTION 8(a) PROGRAM**

4 **TERM.**

5 (a) PROGRAM TERM.—The program term for the pro-
6 gram under section 8(a) of the Small Business Act shall
7 be 10 years. The first 6 years shall be the developmental
8 phase, and the last 4 years shall be the transitional phase.

9 (b) EFFECTIVE DATE FOR MODIFICATIONS TO THE
10 8(a) PROGRAM.—

11 (1) IN GENERAL.—This section shall apply with
12 respect to small business concerns that apply to the
13 program under section 8(a) of the Small Business
14 Act (15 U.S.C. 637(a)) after the date of the enact-
15 ment of this Act.

16 (2) TRANSITIONAL RULE.—A small business
17 concern participating in the program under section
18 8(a) of such Act (15 U.S.C. 637(a)) may participate
19 for not more than 10 years.

20 **SEC. 503. REPORT ON IMPLEMENTATION.**

21 Section 155 of the Small Business Reauthorization
22 and Manufacturing Assistance Act of 2004 (15 U.S.C.
23 657g) is amended by adding at the end the following: “An-
24 nually, concurrent with the submission of the Small Busi-
25 ness Administration’s budget request to the Congress, the

1 Administrator shall submit to the Committee on Small
2 Business and Entrepreneurship of the Senate and the
3 Committee on Small Business of the House of Representa-
4 tives a report detailing progress the Administrator has
5 made towards the implementation of this section.”.

6 **SEC. 504. ASSISTANCE STUDY.**

7 (a) STUDY.—The Administrator of the Small Busi-
8 ness Administration shall conduct a study to determine
9 what changes would be required to provide greater Federal
10 contracting assistance to participants in the program cre-
11 ated by section 8(a) of the Small Business Act that have
12 less equity in their business concerns than other partici-
13 pants in the program.

14 (b) REPORT.—Not later than 6 months after the date
15 of the enactment of this Act, the Administrator shall sub-
16 mit to the Committee on Small Business and Entrepre-
17 neurship of the Senate and the Committee on Small Busi-
18 ness of the House of Representatives a report detailing
19 the results of the study described in subsection (a).

1 **SEC. 505. EXAMINATION OF LIST OF GROUPS THE MEM-**
 2 **BERS OF WHICH ARE PRESUMED TO BE SO-**
 3 **CIALLY DISADVANTAGED FOR PURPOSES OF**
 4 **SMALL DISADVANTAGED BUSINESS PRO-**
 5 **GRAM.**

6 The Administrator of the Small Business Administra-
 7 tion shall examine the list of groups the members of which
 8 are presumed to be socially disadvantaged for purposes of
 9 the Small Disadvantaged Business program under section
 10 8(a) of the Small Business Act and shall consider whether
 11 the list should be updated to include additional groups.
 12 Not later than 6 months after the date of the enactment
 13 of this Act, the Administrator shall submit to Congress
 14 a report on the results of the examination.

15 **TITLE VI—OTHER MATTERS**

16 **SEC. 601. AFFILIATION FOR CERTAIN FRANCHISES.**

17 Section 3(a) of the Small Business Act (15 U.S.C.
 18 632(a)) is amended by adding at the end the following
 19 new paragraph:

20 “(5) SPECIAL RULE RELATING TO FRANCHISES
 21 IN THE TEMPORARY EMPLOYEE SERVICES INDUS-
 22 TRY.—In determining whether a franchisee is affili-
 23 ated with a franchisor in the temporary employee
 24 services industry, the Administrator shall—

25 “(A) disregard—

1 “(i) whether the franchisor finances
2 the payroll of the temporary staffing per-
3 sonnel (including billing, collecting, and re-
4 mitting client fees); and

5 “(ii) whether the temporary staffing
6 personnel are treated as employees or inde-
7 pendent contractors of the franchisor for
8 tax or other purposes; and

9 “(B) consider the processing of payroll and
10 billing by a franchisor as customary and com-
11 mon practice in the temporary employee serv-
12 ices industry that does not provide probative
13 weight.”.

14 **SEC. 602. SENSE OF THE HOUSE OF REPRESENTATIVES ON**
15 **ACQUISITIONS CONDUCTED UNDER THE GEN-**
16 **ERAL SERVICES ADMINISTRATION’S FED-**
17 **ERAL SUPPLY SCHEDULE.**

18 (a) FINDINGS.—Congress finds the following:

19 (1) The Small Business Act was adopted by
20 Congress to ensure that small business concerns re-
21 ceive fair access to, and a fair share of, Federal gov-
22 ernment contracts and subcontracts.

23 (2) There is a disagreement between the Gen-
24 eral Services Administration and the Small Business
25 Administration on whether the Small Business Act

1 applies to the acquisitions under the General Serv-
2 ices Administration's Federal Supply Schedule,
3 which account for over \$30,000,000,000 in procure-
4 ment dollars awarded each year.

5 (3) As demonstrated in proceedings of the
6 White House Acquisition Advisory Panel, small busi-
7 nesses hold 79.6 percent of contracts under the Fed-
8 eral Supply Schedule, but receive only 37.1 percent
9 of dollars awarded under the Federal Supply Sched-
10 ule, and this disparity has a significant impact on
11 the competitive viability of small business concerns
12 in government contracting.

13 (b) SENSE OF THE HOUSE.—Therefore, it is the
14 sense of the House of Representatives that small business
15 set-asides should not be excluded from any acquisitions
16 under the General Services Administration's Federal Sup-
17 ply Schedule.

18 **SEC. 603. STUDY ON FRIVOLOUS PROTESTS.**

19 (a) STUDY.—The Administrator of the Small Busi-
20 ness Administration shall conduct a study to determine,
21 with respect to small business contracts, whether incum-
22 bent Federal contractors submit frivolous protests to ex-
23 tend the length of current contracts before protest deci-
24 sions are resolved.

1 (b) CONTENTS.—In conducting the study, the Ad-
2 ministrator shall—

3 (1) determine the number of Government Ac-
4 countability Office bid protests and Small Business
5 Administration size protests filed by incumbent Fed-
6 eral contractors with respect to small business con-
7 tracts, the number of incumbent contracts extended
8 because of the protest, the extra costs of extending
9 incumbent contracts during the protest, and the
10 final rulings of these protests;

11 (2) determine the financial impact of protests
12 filed by incumbent Federal contractors on small
13 businesses that were originally awarded the pro-
14 tested small business contracts, including costs asso-
15 ciated with defending the protests and costs incurred
16 by Federal agencies;

17 (3) identify the incumbent Federal contractors
18 that file the most unsuccessful protests on small
19 business contracts; and

20 (4) develop recommendations—

21 (A) to ease any financial burden on small
22 businesses during the protest of small business
23 contracts; and

1 (B) to discourage frivolous protests by in-
2 cumbent Federal contractors on small business
3 contracts.

4 (c) CONSULTATION.—In conducting the study, the
5 Administrator shall consult with the Government Account-
6 ability Office, any necessary Federal agencies, and the Of-
7 fice of Federal Procurement Policy.

8 (d) REPORT.—Not later than 180 days after the date
9 of the enactment of this Act, the Administrator shall sub-
10 mit to Congress a report on the results of the study, to-
11 gether with the recommendations developed under sub-
12 section (b)(4).

13 **SEC. 604. SMALL BUSINESS ADMINISTRATION LIAISON.**

14 (a) ESTABLISHMENT.—The Administrator of the
15 Small Business Administration shall create a liaison posi-
16 tion whose duty it is to ensure that section 2(i) of the
17 Small Business Act is carried out.

18 (b) FUNCTIONS.—In carrying out the duty described
19 in subsection (a), the liaison shall consult with the Assist-
20 ant Secretary of the Department of Homeland Security
21 for United States Immigration and Customs Enforcement.

22 **SEC. 605. PROHIBITION ON BUSINESS-CLASS OR FIRST-**
23 **CLASS AIRLINE TRAVEL.**

24 In carrying out the provisions of the Small Business
25 Contracting Program Improvements Act, the Small Busi-

1 ness Administrator or any employee may not purchase
2 business-class or first-class airline travel in contravention
3 of sections 301–10.122 through 301–10.124 of title 41,
4 Code of Federal Regulations.

Passed the House of Representatives October 30,
2007.

Attest:

Clerk.

110TH CONGRESS
1ST SESSION

H. R. 3867

AN ACT

To update and expand the procurement programs of the Small Business Administration, and for other purposes.