

110TH CONGRESS  
1ST SESSION

# H. R. 3867

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 2007

Ms. VELÁZQUEZ (for herself, Ms. FALLIN, Ms. CLARKE, and Mr. REYES) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

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,*

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

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

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 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 13360.

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.

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. Allowing small business concerns that are not HUBZone program participants to protest HUBZone awards.

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. Allowing small business concerns that are not section 8(a) program participants to protest section 8(a) awards.

TITLE VI—OTHER MATTERS

Sec. 601. Affiliation for certain franchises.

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-  
23 erans,’” before “or a ‘small business concern owned and  
24 controlled by women’”.

1 **SEC. 103. IMPLEMENTATION OF EXECUTIVE ORDER 13360.**

2 Section 36 of the Small Business Act (15 U.S.C.  
3 657f) is amended by adding at the end the following new  
4 subsection:

5 “(f) IMPLEMENTATION OF EXECUTIVE ORDER  
6 13360.—The Administrator shall—

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

11 “(2) advise and assist other agencies in their  
12 strategies to expand procurement opportunities for  
13 such concerns; and

14 “(3) make training assistance on Federal con-  
15 tract law, procedures, and practices available to such  
16 concerns.”.

17 **TITLE II—PROTECTING TAX-**  
18 **PAYERS AND ENSURING PRO-**  
19 **GRAM CONSISTENCY**

20 **SEC. 201. REQUIRING BUSINESS INTEGRITY OF SMALL**  
21 **BUSINESS CONCERNS.**

22 The Small Business Act (15 U.S.C. 631 et seq.) is  
23 amended by adding at the end the following new section:

1 **“SEC. 38. REQUIRING BUSINESS INTEGRITY OF SMALL**  
2 **BUSINESS CONCERNS.**

3 “(a) SECTION 8(a) PROGRAM BACKGROUND  
4 CHECK.—No applicant may be approved for participation  
5 in the section 8(a) program unless the Administrator first  
6 performs a background check on the applicant and deter-  
7 mines that the applicant does not lack business integrity.

8 “(b) HUBZONE PROGRAM BACKGROUND CHECK.—  
9 No award of a second contract under the authority of sec-  
10 tion 31(b)(2)(A) or 31(b)(2)(B) may be made unless the  
11 Administrator first performs a background check on the  
12 applicant and determines that the applicant does not lack  
13 business integrity.

14 “(c) RANDOM BACKGROUND CHECK.—The Adminis-  
15 trator shall have random background checks performed on  
16 owners and officers of small business concerns that have  
17 been awarded a contract under section 8(m), 36(a), or  
18 36(b) to determine whether such owners and officers lacks  
19 business integrity.”.

20 **SEC. 202. ESTABLISHMENT OF GOALS.**

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

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

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

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

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

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

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

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

24 Section 8(d)(1) of the Small Business Act (15 U.S.C.  
25 637(d)(1)) is amended by striking the first sentence and

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

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

16 (a) SECTION 8(a) PROGRAM.—Section  
17 8(a)(1)(D)(i)(II) of the Small Business Act (15 U.S.C.  
18 637(a)(1)(D)(i)(II)) is amended—

19 (1) by striking “\$5,000,000” and inserting  
20 “\$5,500,000”; and

21 (2) by striking “\$3,000,000” and inserting  
22 “\$5,100,000”.

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

1 (1) by striking “\$5,000,000” and inserting  
2 “\$5,500,000”; and

3 (2) by striking “\$3,000,000” and inserting  
4 “\$5,100,000”.

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

8 (1) by striking “\$5,000,000” and inserting  
9 “\$5,500,000”; and

10 (2) by striking “\$3,000,000” and inserting  
11 “\$5,100,000”.

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

15 **SEC. 301. IMPLEMENT THE WOMEN’S PROCUREMENT PRO-**  
16 **GRAM.**

17 Subsection (m) of section 8 of the Small Business Act  
18 (15 U.S.C. 637(m)) is amended—

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

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



1           “(2) AUTHORITY TO RESTRICT COMPETITION.—

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

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

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

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

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

1           “(v) each concern is certified in a  
2           manner described in subparagraph (B).

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

9                   “(i) a Federal agency or a State or  
10                  local government;

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

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

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

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

1           “(B) the Administrator determines that  
2 such concern is in an industry in which small  
3 business concerns owned and controlled by  
4 women are substantially under-represented in  
5 Federal contracting.

6           “(4) IDENTIFICATION OF INDUSTRIES.—

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

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

1           “(ii) The study shall measure utiliza-  
2           tion and availability by—

3                   “(I) using the two best available  
4                   data sources;

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

8                   “(III) measuring only Federal  
9                   contracts awarded for amounts over  
10                  \$25,000.

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

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

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

1                   “(III) all business concerns in  
2                   the United States relative to the dol-  
3                   lar amounts of Federal contracts  
4                   awarded to small business concerns  
5                   owned and controlled by women; and

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

12                  “(B) DETERMINATION BY HEAD OF DE-  
13                  PARTMENT OR AGENCY.—Until such time as  
14                  the Administrator completes the identification  
15                  of industries required by subparagraph (A), the  
16                  determination as to whether an industry is one  
17                  in which small business concerns owned and  
18                  controlled by women are under-represented in  
19                  Federal contracting shall be made by the head  
20                  of the department or agency for which the con-  
21                  tract is to be performed.

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

1 “(i) ensure the completion of the first  
2 study required by subparagraph (A);

3 “(ii) approve national certifying enti-  
4 ties for the purposes of paragraph  
5 (2)(B)(ii);

6 “(iii) establish procedures required by  
7 paragraph (5)(A); and

8 “(iv) establish standards described in  
9 paragraph (2)(B)(iii).”;

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

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

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

18 **TITLE IV—STRENGTHENING**  
19 **COMMUNITY DEVELOPMENT**

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

21 Section 31(b) of the Small Business Act (15 U.S.C.  
22 657a(b)) is amended by adding at the end the following:

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

24 “(A) VERIFICATION.—When a small busi-  
25 ness concern that has previously been awarded

1 a contract under paragraph (2)(A) or (2)(B) is  
2 to be awarded a second contract under para-  
3 graph (2)(A) or (2)(B), the Administrator shall  
4 perform an on-site inspection to determine  
5 whether such small business concern is a quali-  
6 fied HUBZone small business concern. This  
7 paragraph does not require such an inspection  
8 before the award of a third or subsequent con-  
9 tract. This paragraph does not prevent a second  
10 contract from being awarded before such in-  
11 spection is completed.

12 “(B) NOTIFICATION BY SMALL BUSINESS  
13 CONCERN.—The Administrator shall require a  
14 small business concern to notify the Adminis-  
15 trator, prior to being awarded a second contract  
16 under paragraph (2)(A) or (2)(B), of such busi-  
17 ness concern’s attempt to be awarded a second  
18 contract under paragraph (2)(A) or (2)(B). Not  
19 later than 90 days after the date of the enact-  
20 ment of this subparagraph, the Administrator  
21 shall establish procedures to implement this  
22 subparagraph.”.

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

24 Section 31(b) of the Small Business Act (15 U.S.C.  
25 657a(b)) is amended by adding at the end the following:

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

13 **SEC. 403. ALLOWING SMALL BUSINESS CONCERNS THAT**  
14                   **ARE NOT HUBZONE PROGRAM PARTICIPANTS**  
15                   **TO PROTEST HUBZONE AWARDS.**

16          Section 31(c) of the Small Business Act (15 U.S.C.  
17 657a(c)) is amended by adding at the end the following  
18 new paragraph:

19           “(5) PROTESTS BY SMALL BUSINESS CON-  
20           CERNS.—For purposes of this subsection, the term  
21           ‘interested party’ shall include any small business  
22           concern.”.



1       **TITLE V—MODERNIZING THE**  
2                   **8(A) PROGRAM**

3       **SEC. 501. MODERNIZING THE SECTION 8(A) PROGRAM NET**  
4                   **WORTH LIMITATIONS.**

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

10           (1) **DETERMINATION FOR TERM OF PRO-**  
11 **GRAM.**—For the purpose of this section, an indi-  
12 vidual who has been determined by the Adminis-  
13 trator to be economically disadvantaged at the time  
14 of program entry shall be deemed to be economically  
15 disadvantaged for the term of the program.

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

19           (A) The value of any investment of an eco-  
20 nomically disadvantaged owner in the small  
21 business concern, except that such value shall  
22 be taken into account under this paragraph  
23 when comparing such concerns to other con-  
24 cerns in the same business area that are owned



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

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

10 **SEC. 503. REPORT ON IMPLEMENTATION.**

11           Section 155 of the Small Business Reauthorization  
12           and Manufacturing Assistance Act of 2004 (15 U.S.C.  
13           657g) is amended by adding at the end the following: “An-  
14           nually, concurrent with the submission of the Small Busi-  
15           ness Administration’s budget request to the Congress, the  
16           Administrator shall submit to the Committee on Small  
17           Business and Entrepreneurship of the Senate and the  
18           Committee on Small Business of the House of Representa-  
19           tives a report detailing progress the Administrator has  
20           made towards the implementation of this section.”.

1 **SEC. 504. ALLOWING SMALL BUSINESS CONCERNS THAT**  
 2 **ARE NOT SECTION 8(A) PROGRAM PARTICI-**  
 3 **PANTS TO PROTEST SECTION 8(A) AWARDS.**

4 Section 8(a) of the Small Business Act (15 U.S.C.  
 5 637(a)) is amended by adding at the end the following  
 6 new paragraph:

7 “(22) Rules similar to the rules of paragraphs  
 8 (5) and (6) of subsection (m) shall apply for pur-  
 9 poses of this subsection.”.

10 **TITLE VI—OTHER MATTERS**

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

12 Section 3(a) of the Small Business Act (15 U.S.C.  
 13 632(a)) is amended by adding at the end the following  
 14 new paragraph:

15 “(5) SPECIAL RULE RELATING TO FRANCHISES  
 16 IN THE TEMPORARY EMPLOYEE SERVICES INDUS-  
 17 TRY.—In determining whether a franchisee is affili-  
 18 ated with a franchisor in the temporary employee  
 19 services industry, the Administrator shall—

20 “(A) disregard—

21 “(i) whether the franchisor finances  
 22 the payroll of the temporary staffing per-  
 23 sonnel (including billing, collecting, and re-  
 24 mitting client fees); and

25 “(ii) whether the temporary staffing  
 26 personnel are treated as employees or inde-

1                   pendent contractors of the franchisor for  
2                   tax or other purposes; and

3                   “(B) consider the processing of payroll and  
4                   billing by a franchisor as customary and com-  
5                   mon practice in the temporary employee serv-  
6                   ices industry that does not provide probative  
7                   weight.”.

○