

Union Calendar No. 254

110TH CONGRESS
1ST SESSION

H. R. 3867

[Report No. 110-400]

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

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

OCTOBER 22, 2007

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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,*

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 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 CERNES.—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 by other than socially disadvantaged individ-
2 uals.

3 (B) The equity of an economically dis-
4 advantaged owner in a primary personal resi-
5 dence.

6 (3) MAXIMUM NET WORTH.—When considering
7 an individual’s net worth for the purpose of deter-
8 mining the degree of diminished credit and capital
9 opportunities of such individual, the Administrator
10 shall consider an individual net worth of \$550,000
11 or less as tending to show diminished credit and
12 capital opportunities.

13 (b) EFFECTIVE DATE FOR MODIFICATIONS TO THE
14 8(a) PROGRAM.—This section shall apply with respect to
15 small business concerns that apply to the program under
16 section 8(a) of the Small Business Act (15 U.S.C. 637(a))
17 after the date of the enactment of this Act.

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

19 **TERM.**

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

24 (b) EFFECTIVE DATE FOR MODIFICATIONS TO THE
25 8(a) PROGRAM.—

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.”.

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