

Union Calendar No. 523

112TH CONGRESS
2^D SESSION

H. R. 3850

[Report No. 112-720, Part I]

To amend the Small Business Act with respect to goals for procurement contracts awarded to small business concerns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2012

Mr. GRAVES of Missouri (for himself, Mr. OWENS, and Mr. SCHILLING) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 21, 2012

Additional sponsors: Mr. CHABOT, Mrs. ELLMERS, Mr. MULVANEY, Mr. WALSH of Illinois, Mr. WEST, Mr. HANNA, Mr. TIPTON, and Ms. HERRERA BEUTLER

DECEMBER 21, 2012

Reported from the Committee on Small Business with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 21, 2012

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 31, 2012]

A BILL

To amend the Small Business Act with respect to goals for procurement contracts awarded to small business concerns, 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.**

4 *This Act may be cited as the “Government Efficiency*
5 *through Small Business Contracting Act of 2012”.*

6 **SEC. 2. GOALS FOR PROCUREMENT CONTRACTS AWARDED**
7 **TO SMALL BUSINESS CONCERNS.**

8 *(a) IN GENERAL.—Section 15(g) of the Small Business*
9 *Act (15 U.S.C. 644(g)) is amended by striking the sub-*
10 *section enumerator and inserting the following:*

11 *“(g) GOALS FOR PROCUREMENT CONTRACTS AWARD-*
12 *ED TO SMALL BUSINESS CONCERNS.—”.*

13 *(b) GOVERNMENTWIDE GOALS.—Paragraph (1) of sec-*
14 *tion 15(g) of such Act (15 U.S.C. 644(g)) is amended to*
15 *read as follows:*

16 *“(1) GOVERNMENTWIDE GOALS.—The President*
17 *shall annually establish Governmentwide goals for*
18 *procurement contracts awarded to small business con-*
19 *cerns, small business concerns owned and controlled*
20 *by service-disabled veterans, qualified HUBZone*
21 *small business concerns, small business concerns*
22 *owned and controlled by socially and economically*
23 *disadvantaged individuals, and small business con-*
24 *cerns owned and controlled by women in accordance*
25 *with the following:*

1 “(A) *The Governmentwide goal for partici-*
2 *ipation by small business concerns shall be estab-*
3 *lished at not less than 25 percent of the total*
4 *value of all prime contract awards for each fiscal*
5 *year and 40 percent of the total value of all sub-*
6 *contract awards for each fiscal year.*

7 “(B) *The Governmentwide goal for partici-*
8 *ipation by small business concerns owned and*
9 *controlled by service-disabled veterans shall be es-*
10 *tablished at not less than 3 percent of the total*
11 *value of all prime contract and at not less than*
12 *3 percent of the total value of all subcontract*
13 *awards for each fiscal year.*

14 “(C) *The Governmentwide goal for partici-*
15 *ipation by qualified HUBZone small business*
16 *concerns shall be established at not less than 3*
17 *percent of the total value of all prime contract*
18 *and at not less than 3 percent of the total value*
19 *of all subcontract awards for each fiscal year.*

20 “(D) *The Governmentwide goal for partici-*
21 *ipation by small business concerns owned and*
22 *controlled by socially and economically dis-*
23 *advantaged individuals shall be established at*
24 *not less than 5 percent of the total value of all*
25 *prime contract and at not less than 5 percent of*

1 *the total value of all subcontract awards for each*
2 *fiscal year.*

3 “(E) *The Governmentwide goal for partici-*
4 *pation by small business concerns owned and*
5 *controlled by women shall be established at not*
6 *less than 5 percent of the total value of all prime*
7 *contract and at not less than 5 percent of the*
8 *total value of all subcontract awards for each fis-*
9 *cal year.”.*

10 (c) *AGENCY GOALS.—Paragraph (2) of section 15(g)*
11 *of such Act (15 U.S.C. 644(g)) is amended to read as fol-*
12 *lows:*

13 “(2) *AGENCY GOALS.—*

14 “(A) *ESTABLISHMENT.—The head of each*
15 *Federal agency shall annually establish, for the*
16 *agency that individual heads, goals for procure-*
17 *ment contracts awarded to small business con-*
18 *cerns, small business concerns owned and con-*
19 *trolled by service-disabled veterans, qualified*
20 *HUBZone small business concerns, small busi-*
21 *ness concerns owned and controlled by socially*
22 *and economically disadvantaged individuals,*
23 *and small business concerns owned and con-*
24 *trolled by women.*

1 “(B) *RELATIONSHIP TO GOVERNMENTWIDE*
2 *GOALS.*—

3 “(i) *SCOPE.*—*The goals established by*
4 *the head of a Federal agency under sub-*
5 *paragraph (A) shall be in the same format*
6 *as the goals established by the President*
7 *under paragraph (1) and shall address both*
8 *prime contract and subcontract awards.*

9 “(ii) *REQUIREMENT TO MEET OR EX-*
10 *CEED GOVERNMENTWIDE GOALS.*—*With re-*
11 *spect to each goal for a fiscal year estab-*
12 *lished under subparagraph (A) for a cat-*
13 *egory of small business concern, the partici-*
14 *ipation percentage applicable to such goal*
15 *may not be less than the participation per-*
16 *centage applicable to the Governmentwide*
17 *goal for such fiscal year established under*
18 *paragraph (1) for such category.*

19 “(C) *CONSULTATION REQUIRED.*—

20 “(i) *IN GENERAL.*—*In establishing*
21 *goals under subparagraph (A), the head of*
22 *each Federal agency shall consult with the*
23 *Administrator.*

24 “(ii) *DISAGREEMENTS.*—*If the Admin-*
25 *istrator and the head of a Federal agency*

1 *fail to agree on a goal established under*
2 *subparagraph (A), the disagreement shall be*
3 *submitted to the Administrator for Federal*
4 *Procurement Policy for final determination.*

5 “(D) *PLAN FOR ACHIEVING GOALS.*—*After*
6 *establishing goals under subparagraph (A) for a*
7 *fiscal year, the head of each Federal agency shall*
8 *develop a plan for achieving such goals, which*
9 *shall apportion responsibilities among the em-*
10 *ployees of such agency having procurement pow-*
11 *ers.*

12 “(E) *EXPANDED PARTICIPATION.*—*In estab-*
13 *lishing goals under subparagraph (A), the head*
14 *of each Federal agency shall make a consistent*
15 *effort to annually expand participation by small*
16 *business concerns from each industry category in*
17 *procurement contracts of such agency, including*
18 *participation by small business concerns owned*
19 *and controlled by service-disabled veterans,*
20 *qualified HUBZone small business concerns,*
21 *small business concerns owned and controlled by*
22 *socially and economically disadvantaged indi-*
23 *viduals, and small business concerns owned and*
24 *controlled by women.*

1 “(F) *CONSIDERATION.*—*The head of each*
2 *Federal agency, in attempting to attain ex-*
3 *expanded participation under subparagraph (E),*
4 *shall consider—*

5 “(i) *contracts awarded as the result of*
6 *unrestricted competition; and*

7 “(ii) *contracts awarded after competi-*
8 *tion restricted to eligible small business con-*
9 *cerns under this section and under the pro-*
10 *gram established under section 8(a).*

11 “(G) *COMMUNICATION REGARDING GOALS.*—

12 “(i) *IMPORTANCE OF ACHIEVING*
13 *GOALS.*—*Each procurement employee or*
14 *program manager described in clause (ii)*
15 *shall communicate to the subordinates of the*
16 *procurement employee or program manager*
17 *the importance of achieving goals estab-*
18 *lished under subparagraph (A).*

19 “(ii) *PROCUREMENT EMPLOYEES OR*
20 *PROGRAM MANAGERS DESCRIBED.*—*A pro-*
21 *urement employee or program manager de-*
22 *scribed in this clause is a senior procure-*
23 *ment executive, senior program manager, or*
24 *Director of Small and Disadvantaged Busi-*

1 *ness Utilization of a Federal agency having*
2 *contracting authority.”.*

3 *(d) ENFORCEMENT; DETERMINATIONS OF THE TOTAL*
4 *VALUE OF CONTRACT AWARDS.—Section 15(g) of the Small*
5 *Business Act (15 U.S.C. 644(g)), as amended by this Act,*
6 *is further amended by adding at the end the following:*

7 *“(3) ENFORCEMENT.—If the Administrator does*
8 *not issue the report required in subsection (h)(2) on*
9 *or before the date that is 120 days after the end of*
10 *the prior fiscal year, the Administrator may not*
11 *carry out or establish any pilot program until the*
12 *date on which the Administrator issues the report.*

13 *“(4) DETERMINATIONS OF THE TOTAL VALUE OF*
14 *CONTRACT AWARDS.—For purposes of the goals estab-*
15 *lished under paragraphs (1) and (2), the total value*
16 *of contract awards for a fiscal year may not be deter-*
17 *mined in a manner that excludes the value of a con-*
18 *tract based on—*

19 *“(A) where the contract is awarded;*

20 *“(B) where the contract is performed;*

21 *“(C) whether the contract is mandated by*
22 *Federal law to be performed by an entity other*
23 *than a small business concern;*

24 *“(D) whether funding for the contract is*
25 *made available in an appropriations Act, if the*

1 *contract is subject to the Competition in Con-*
2 *tracting Act of 1984; or*

3 *“(E) whether the contract is subject to the*
4 *Federal Acquisition Regulation.”.*

5 **SEC. 3. REPORTING ON GOALS FOR PROCUREMENT CON-**
6 **TRACTS AWARDED TO SMALL BUSINESS CON-**
7 **CERNS.**

8 *Subsection (h) of section 15 of the Small Business Act*
9 *(15 U.S.C. 644) is amended to read as follows:*

10 *“(h) REPORTING ON GOALS FOR PROCUREMENT CON-*
11 *TRACTS AWARDED TO SMALL BUSINESS CONCERNS.—*

12 *“(1) AGENCY REPORTS.—At the conclusion of*
13 *each fiscal year, the head of each Federal agency shall*
14 *submit to the Administrator a report describing—*

15 *“(A) the extent of the participation by small*
16 *business concerns, small business concerns owned*
17 *and controlled by veterans (including service-dis-*
18 *abled veterans), qualified HUBZone small busi-*
19 *ness concerns, small business concerns owned and*
20 *controlled by socially and economically dis-*
21 *advantaged individuals, and small business con-*
22 *cerns owned and controlled by women in the pro-*
23 *curement contracts of such agency during such*
24 *fiscal year;*

1 “(B) whether the agency achieved the goals
2 established for the agency under subsection
3 (g)(2)(A) with respect to such fiscal year; and

4 “(C) any justifications for a failure to
5 achieve such goals.

6 “(2) *REPORTS BY ADMINISTRATOR.*—Not later
7 than 60 days after receiving a report from each Fed-
8 eral agency under paragraph (1) with respect to a fis-
9 cal year, the Administrator shall submit to the Presi-
10 dent and Congress, and to make available on a public
11 website, a report that includes—

12 “(A) a copy of each report submitted to the
13 Administrator under paragraph (1);

14 “(B) a determination of whether each goal
15 established by the President under subsection
16 (g)(1) for such fiscal year was achieved;

17 “(C) a determination of whether each goal
18 established by the head of a Federal agency
19 under subsection (g)(2)(A) for such fiscal year
20 was achieved;

21 “(D) the reasons for any failure to achieve
22 a goal established under paragraph (1) or (2)(A)
23 of subsection (g) for such fiscal year and a de-
24 scription of actions planned by the applicable
25 agency to address such failure, except that the

1 *Administrator must concur with each remedi-*
2 *ation plan;*

3 “(E) for the Federal Government and each
4 Federal agency, an analysis of the number and
5 dollar amount of prime contracts awarded dur-
6 ing such fiscal year to—

7 “(i) small business concerns—

8 “(I) in the aggregate;

9 “(II) through sole source con-
10 tracts;

11 “(III) through competitions re-
12 stricted to small business concerns; and

13 “(IV) through unrestricted com-
14 petition;

15 “(ii) small business concerns owned
16 and controlled by service-disabled vet-
17 erans—

18 “(I) in the aggregate;

19 “(II) through sole source con-
20 tracts;

21 “(III) through competitions re-
22 stricted to small business concerns;

23 “(IV) through competitions re-
24 stricted to small business concerns

1 *owned and controlled by service-dis-*
2 *abled veterans; and*

3 “(V) *through unrestricted com-*
4 *petition;*

5 “(iii) *qualified HUBZone small busi-*
6 *ness concerns—*

7 “(I) *in the aggregate;*

8 “(II) *through sole source con-*
9 *tracts;*

10 “(III) *through competitions re-*
11 *stricted to small business concerns;*

12 “(IV) *through competitions re-*
13 *stricted to qualified HUBZone small*
14 *business concerns;*

15 “(V) *through unrestricted com-*
16 *petition where a price evaluation pref-*
17 *erence was used; and*

18 “(VI) *through unrestricted com-*
19 *petition where a price evaluation pref-*
20 *erence was not used;*

21 “(iv) *small business concerns owned*
22 *and controlled by socially and economically*
23 *disadvantaged individuals—*

24 “(I) *in the aggregate;*

1 “(II) through sole source con-
2 tracts;

3 “(III) through competitions re-
4 stricted to small business concerns;

5 “(IV) through competitions re-
6 stricted to small business concerns
7 owned and controlled by socially and
8 economically disadvantaged individ-
9 uals;

10 “(V) through unrestricted com-
11 petition; and

12 “(VI) by reason of that concern’s
13 certification as a small business owned
14 and controlled by socially and eco-
15 nomically disadvantaged individuals;

16 “(v) small business concerns owned by
17 an Alaska Native Corporation—

18 “(I) in the aggregate;

19 “(II) through sole source con-
20 tracts;

21 “(III) through competitions re-
22 stricted to small business concerns;

23 “(IV) through competitions re-
24 stricted to small business concerns
25 owned and controlled by socially and

1 *economically disadvantaged individ-*
2 *uals; and*

3 *“(V) through unrestricted com-*
4 *petition; and*

5 *“(vi) small business concerns owned*
6 *and controlled by women—*

7 *“(I) in the aggregate;*

8 *“(II) through competitions re-*
9 *stricted to small business concerns;*

10 *“(III) through competitions re-*
11 *stricted using the authority under sec-*
12 *tion 8(m)(2);*

13 *“(IV) through competitions re-*
14 *stricted using the authority under sec-*
15 *tion 8(m)(2) and in which the waiver*
16 *authority under section 8(m)(3) was*
17 *used; and*

18 *“(V) through unrestricted com-*
19 *petition; and*

20 *“(F) for the Federal Government and each*
21 *Federal agency, the number, dollar amount, and*
22 *distribution with respect to the North American*
23 *Industry Classification System of subcontracts*
24 *awarded during such fiscal year to small busi-*
25 *ness concerns, small business concerns owned and*

1 *controlled by service-disabled veterans, qualified*
2 *HUBZone small business concerns, small busi-*
3 *ness concerns owned and controlled by socially*
4 *and economically disadvantaged individuals,*
5 *and small business concerns owned and con-*
6 *trolled by women.”.*

7 **SEC. 4. SENIOR EXECUTIVES.**

8 (a) *TRAINING.*—*Programs established for the develop-*
9 *ment of senior executives under section 3396(a) of title 5,*
10 *United States Code, shall include training with respect to*
11 *Federal procurement requirements, including contracting*
12 *requirements under the Small Business Act (15 U.S.C. 631*
13 *et seq.).*

14 (b) *SABBATICALS.*—*If a Federal agency does not*
15 *achieve, with respect to a fiscal year, a goal established by*
16 *the head of such agency under section 15(g)(2)(A) of the*
17 *Small Business Act (15 U.S.C. 644(g)(2)(A)), a senior exec-*
18 *utive within that agency may not be granted, during the*
19 *succeeding fiscal year, a sabbatical under section 3396(c)*
20 *of title 5, United States Code.*

21 (c) *INCENTIVE AWARDS.*—*If a Federal agency does not*
22 *achieve, with respect to a fiscal year, a goal established by*
23 *the head of such agency under section 15(g)(2)(A) of the*
24 *Small Business Act (15 U.S.C. 644(g)(2)(A)), a senior exec-*
25 *utive within that agency may not receive, during the suc-*

1 *ceeding fiscal year, any incentive award under subchapter*
2 *I of chapter 45 of title 5, United States Code.*

3 *(d) SENIOR EXECUTIVE DEFINED.—In this section, the*
4 *term “senior executive” has the meaning given that term*
5 *in section 3132(a) of title 5, United States Code.*

6 **SEC. 5. SENSE OF CONGRESS.**

7 *It is the sense of Congress that the contracting provi-*
8 *sions of the Small Business Act shall apply to the leasing*
9 *of buildings and office space by the United States, and shall*
10 *not apply to any leasing transaction between private par-*
11 *ties.*

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