

112TH CONGRESS
1ST SESSION

S. 633

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2011

Referred to the Committee on Small Business

AN ACT

To prevent fraud in small business contracting, 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.**

2 This Act may be cited as the “Small Business Con-
3 tracting Fraud Prevention Act of 2011”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “8(a) program” means the pro-
7 gram under section 8(a) of the Small Business Act
8 (15 U.S.C. 637(a));

9 (2) the terms “Administration” and “Adminis-
10 trator” mean the Small Business Administration
11 and the Administrator thereof, respectively;

12 (3) the terms “HUBZone” and “HUBZone
13 small business concern” and “HUBZone map” have
14 the meanings given those terms in section 3(p) of
15 the Small Business Act (15 U.S.C. 632(p)), as
16 amended by this Act; and

17 (4) the term “recertification” means a deter-
18 mination by the Administrator that a business con-
19 cern that was previously determined to be a qualified
20 HUBZone small business concern is a qualified
21 HUBZone small business concern under section
22 3(p)(5) of the Small Business Act (15 U.S.C.
23 632(p)(5)).

1 **SEC. 3. FRAUD DETERRENCE AT THE SMALL BUSINESS AD-**
2 **MINISTRATION.**

3 Section 16 of the Small Business Act (15 U.S.C. 645)
4 is amended—

5 (1) in subsection (d)—

6 (A) in paragraph (1)—

7 (i) in the matter preceding subpara-
8 graph (A), by striking “Whoever” and all
9 that follows through “oneself or another”
10 and inserting the following: “A person
11 shall be subject to the penalties and rem-
12 edies described in paragraph (2) if the per-
13 son misrepresents the status of any con-
14 cern or person as a small business concern,
15 a qualified HUBZone small business con-
16 cern, a small business concern owned and
17 controlled by socially and economically dis-
18 advantaged individuals, a small business
19 concern owned and controlled by women,
20 or a small business concern owned and
21 controlled by service-disabled veterans, in
22 order to obtain for any person”;

23 (ii) by amending subparagraph (A) to
24 read as follows:

“(A) prime contract, subcontract, grant, or cooperative agreement to be awarded under subsection (a) or (m) of section 8, or section 9, 15, 31, or 36;”;

(iii) by striking subparagraph (B);

(iv) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(v) in subparagraph (C), as so redesignated, by striking “, shall be” and all that follows and inserting a period;

(B) in paragraph (2)—

(i) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(ii) by inserting after subparagraph (B) the following:

“(C) be subject to the civil remedies under subchapter III of chapter 37 of title 31, United States Code (commonly known as the ‘False Claims Act’);”;
and

(C) by adding at the end the following:

“(3)(A) In the case of a violation of paragraph (1)(A), (g), or (h), for purposes of a proceeding described in subparagraph (A) or (C) of paragraph (2), the amount of the loss to the Federal Government or the damages sus-

1 tained by the Federal Government, as applicable, shall be
2 an amount equal to the amount that the Federal Govern-
3 ment paid to the person that received a contract, grant,
4 or cooperative agreement described in paragraph (1)(A),
5 (g), or (h), respectively.

6 “(B) In the case of a violation of subparagraph (B)
7 or (C) of paragraph (1), for the purpose of a proceeding
8 described in subparagraph (A) or (C) of paragraph (2),
9 the amount of the loss to the Federal Government or the
10 damages sustained by the Federal Government, as appli-
11 cable, shall be an amount equal to the portion of any pay-
12 ment by the Federal Government under a prime contract
13 that was used for a subcontract described in subparagraph
14 (B) or (C) of paragraph (1), respectively.

15 “(C) In a proceeding described in subparagraph (A)
16 or (B), no credit shall be applied against any loss or dam-
17 ages to the Federal Government for the fair market value
18 of the property or services provided to the Federal Govern-
19 ment.”;

20 (2) by striking subsection (e) and inserting the
21 following:

22 “(e) Any representation of the status of any concern
23 or person as a small business concern, a HUBZone small
24 business concern, a small business concern owned and con-
25 trolled by socially and economically disadvantaged individ-

1 uals, a small business concern owned and controlled by
 2 women, or a small business concern owned and controlled
 3 by service-disabled veterans, in order to obtain any prime
 4 contract, subcontract, grant, or cooperative agreement de-
 5 scribed in subsection (d)(1) shall be made in writing or
 6 through the Online Representations and Certifications Ap-
 7 plication process required under section 4.1201 of the
 8 Federal Acquisition Regulation, or any successor there-
 9 to.”; and

10 (3) by adding at the end the following:

11 “(g) A person shall be subject to the penalties and
 12 remedies described in subsection (d)(2) if the person mis-
 13 represents the status of any concern or person as a small
 14 business concern, a qualified HUBZone small business
 15 concern, a small business concern owned and controlled
 16 by socially and economically disadvantaged individuals, a
 17 small business concern owned and controlled by women,
 18 or a small business concern owned and controlled by serv-
 19 ice-disabled veterans—

20 “(1) in order to allow any person to participate
 21 in any program of the Administration; or

22 “(2) in relation to a protest of a contract award
 23 or proposed contract award made under regulations
 24 issued by the Administration.

1 “(h)(1) A person that submits a request for payment
 2 on a contract or subcontract that is awarded under sub-
 3 section (a) or (m) of section 8, or section 9, 15, 31, or
 4 36, shall be deemed to have submitted a certification that
 5 the person complied with regulations issued by the Admin-
 6 istration governing the percentage of work that the person
 7 is required to perform on the contract or subcontract, un-
 8 less the person states, in writing, that the person did not
 9 comply with the regulations.

10 “(2) A person shall be subject to the penalties and
 11 remedies described in subsection (d)(2) if the person—

12 “(A) uses the services of a business other than
 13 the business awarded the contract or subcontract to
 14 perform a greater percentage of work under a con-
 15 tract than is permitted by regulations issued by the
 16 Administration; or

17 “(B) willfully participates in a scheme to cir-
 18 cumvent regulations issued by the Administration
 19 governing the percentage of work that a contractor
 20 is required to perform on a contract.”.

21 **SEC. 4. VETERANS INTEGRITY IN CONTRACTING.**

22 (a) DEFINITION.—Section 3(q)(1) of the Small Busi-
 23 ness Act (15 U.S.C. 632(q)(1)) is amended by striking
 24 “means a veteran” and all that follows and inserting the
 25 following: “means—

1 “(A) a veteran with a service-connected
2 disability rated by the Secretary of Veterans Af-
3 fairs as zero percent or more disabling; or

4 “(B) a former member of the Armed
5 Forces who is retired, separated, or placed on
6 the temporary disability retired list for physical
7 disability under chapter 61 of title 10, United
8 States Code.”.

9 (b) VETERANS CONTRACTING.—Section 4 of the
10 Small Business Act (15 U.S.C. 633) is amended by adding
11 at the end the following:

12 “(g) VETERAN STATUS.—

13 “(1) IN GENERAL.—A business concern seeking
14 status as a small business concern owned and con-
15 trolled by service-disabled veterans shall—

16 “(A) submit an annual certification indi-
17 cating that the business concern is a small busi-
18 ness concern owned and controlled by service-
19 disabled veterans by means of the Online Rep-
20 resentations and Certifications Application
21 process required under section 4.1201 of the
22 Federal Acquisition Regulation, or any suc-
23 cessor thereto; and

24 “(B) register with—

1 “(i) the Central Contractor Registra-
2 tion database maintained under subpart
3 4.11 of the Federal Acquisition Regulation,
4 or any successor thereto; and

5 “(ii) the VetBiz database of the De-
6 partment of Veterans Affairs, or any suc-
7 cessor thereto.

8 “(2) VERIFICATION OF STATUS.—

9 “(A) VETERANS AFFAIRS.—The Secretary
10 of Veterans Affairs shall determine whether a
11 business concern registered with the VetBiz
12 database of the Department of Veterans Af-
13 fairs, or any successor thereto, as a small busi-
14 ness concern owned and controlled by veterans
15 or a small business concern owned and con-
16 trolled by service-disabled veterans is owned
17 and controlled by a veteran or a service-disabled
18 veteran, as the case may be.

19 “(B) FEDERAL AGENCIES GENERALLY.—
20 The head of each Federal agency shall—

21 “(i) for a sole source contract award-
22 ed to a small business concern owned and
23 controlled by service-disabled veterans or a
24 contract awarded with competition re-
25 stricted to small business concerns owned

1 and controlled by service-disabled veterans
2 under section 36, determine whether a
3 business concern submitting a proposal for
4 the contract is a small business concern
5 owned and controlled by service-disabled
6 veterans; and

7 “(ii) use the VetBiz database of the
8 Department of Veterans Affairs, or any
9 successor thereto, in determining whether
10 a business concern is a small business con-
11 cern owned and controlled by service-dis-
12 abled veterans.

13 “(3) DEBARMENT AND SUSPENSION.—If the
14 Administrator determines that a business concern
15 knowingly and willfully misrepresented that the busi-
16 ness concern is a small business concern owned and
17 controlled by service-disabled veterans, the Adminis-
18 trator may debar or suspend the business concern
19 from contracting with the United States.”.

20 (c) INTEGRATION OF DATABASES.—The Adminis-
21 trator for Federal Procurement Policy and the Secretary
22 of Veterans Affairs shall ensure that data is shared on
23 an ongoing basis between the VetBiz database of the De-
24 partment of Veterans Affairs and the Central Contractor

1 Registration database maintained under subpart 4.11 of
2 the Federal Acquisition Regulation.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by
5 subsection (b) and the requirements under sub-
6 section (c) shall take effect on the date on which the
7 Secretary of Veterans Affairs (referred to in this
8 subsection as the “Secretary”) publishes in the Fed-
9 eral Register a determination that the Department
10 of Veterans Affairs has the necessary resources and
11 capacity to carry out the additional responsibility of
12 determining whether small business concerns reg-
13 istered with the VetBiz database of the Department
14 of Veterans Affairs are owned and controlled by a
15 veteran or a service-disabled veteran, as the case
16 may be, in accordance with subsection (g) of section
17 4 of the Small Business Act (15 U.S.C. 633), as
18 added by subsection (b).

19 (2) TIMELINE.—If the Secretary determines
20 that the Secretary is not able to publish the deter-
21 mination under paragraph (1) before the date that
22 is 1 year after the date of enactment of this Act, the
23 Secretary shall, not later than 1 year after the date
24 of enactment of this Act, submit a report containing
25 an estimate of the date on which the Secretary will

1 publish the determination under paragraph (1) to
2 the Committee on Small Business and Entrepre-
3 neurship and the Committee on Veterans' Affairs of
4 the Senate and the Committee on Small Business
5 and the Committee on Veterans' Affairs of the
6 House of Representatives.

7 **SEC. 5. SECTION 8(a) PROGRAM IMPROVEMENTS.**

8 (a) REVIEW OF EFFECTIVENESS.—Section 8(a) of
9 the Small Business Act (15 U.S.C. 637(a)) is amended
10 by adding at the end the following:

11 “(22) Not later than 3 years after the date of enact-
12 ment of this paragraph, and every 3 years thereafter, the
13 Comptroller General of the United States shall—

14 “(A) conduct an evaluation of the effectiveness
15 of the program under this subsection, including an
16 examination of—

17 “(i) the number and size of contracts ap-
18 plied for, as compared to the number received
19 by, small business concerns after successfully
20 completing the program;

21 “(ii) the percentage of small business con-
22 cerns that continue to operate during the 3-year
23 period beginning on the date on which the small
24 business concerns successfully complete the pro-
25 gram;

1 “(iii) whether the business of small busi-
2 ness concerns increases during the 3-year pe-
3 riod beginning on the date on which the small
4 business concerns successfully complete the pro-
5 gram; and

6 “(iv) the number of training sessions of-
7 fered under the program; and

8 “(B) submit to the Committee on Small Busi-
9 ness and Entrepreneurship of the Senate and the
10 Committee on Small Business of the House of Rep-
11 resentatives a report regarding each evaluation
12 under subparagraph (A).”.

13 (b) OTHER IMPROVEMENTS.—In order to improve
14 the 8(a) program, the Administrator shall—

15 (1) not later than 90 days after the date of en-
16 actment of this Act, begin to—

17 (A) evaluate the feasibility of—

18 (i) using additional third-party data
19 sources;

20 (ii) making unannounced visits of
21 sites that are selected randomly or using
22 risk-based criteria;

23 (iii) using fraud detection tools, in-
24 cluding data-mining techniques; and

1 (iv) conducting financial and analyt-
2 ical training for the business opportunity
3 specialists of the Administration;

4 (B) evaluate the feasibility and advisability
5 of amending regulations applicable the 8(a) pro-
6 gram to require that calculations of the ad-
7 justed net worth or total assets of an individual
8 include assets held by the spouse of the indi-
9 vidual; and

10 (C) develop a more consistent enforcement
11 strategy that includes the suspension or debar-
12 ment of contractors that knowingly make mis-
13 representations in order to qualify for the 8(a)
14 program; and

15 (2) not later than 1 year after the date on
16 which the Comptroller General submits the report
17 under section 8(a)(22)(B) of the Small Business
18 Act, as added by subsection (c), issue, in final form,
19 proposed regulations of the Administration that—

20 (A) determine the economic disadvantage
21 of a participant in the 8(a) program based on
22 the income and asset levels of the participant at
23 the time of application and annual recertifi-
24 cation for the 8(a) program; and

1 (B) limit the ability of a small business
2 concern to participate in the 8(a) program if an
3 immediate family member of an owner of the
4 small business concern is, or has been, a partic-
5 ipant in the 8(a) program, in the same indus-
6 try.

7 **SEC. 6. HUBZONE IMPROVEMENTS.**

8 (a) PURPOSE.—The purpose of this section is to re-
9 form and improve the HUBZone program of the Adminis-
10 tration.

11 (b) IN GENERAL.—The Administrator shall—

12 (1) ensure the HUBZone map is—

13 (A) accurate and up-to-date; and

14 (B) revised as new data is made available
15 to maintain the accuracy and currency of the
16 HUBZone map;

17 (2) implement policies for ensuring that only
18 HUBZone small business concerns determined to be
19 qualified under section 3(p)(5) of the Small Busi-
20 ness Act (15 U.S.C. 632(p)(5)) are participating in
21 the HUBZone program, including through the ap-
22 propriate use of technology to control costs and
23 maximize, among other benefits, uniformity, com-
24 pleteness, simplicity, and efficiency;

1 (3) submit to the Committee on Small Business
2 and Entrepreneurship of the Senate and the Com-
3 mittee on Small Business of the House of Rep-
4 resentatives a report regarding any application to be
5 designated as a HUBZone small business concern or
6 for recertification for which the Administrator has
7 not made a determination as of the date that is 60
8 days after the date on which the application was
9 submitted or initiated, which shall include a plan
10 and timetable for ensuring the timely processing of
11 the applications; and

12 (4) develop measures and implement plans to
13 assess the effectiveness of the HUBZone program
14 that—

15 (A) require the identification of a baseline
16 point in time to allow the assessment of eco-
17 nomic development under the HUBZone pro-
18 gram, including creating additional jobs; and

19 (B) take into account—

20 (i) the economic characteristics of the
21 HUBZone; and

22 (ii) contracts being counted under
23 multiple socioeconomic subcategories.

24 (c) EMPLOYMENT PERCENTAGE.—Section 3(p) of the
25 Small Business Act (15 U.S.C. 632(p)) is amended—

1 (1) in paragraph (5), by adding at the end the
2 following:

3 “(E) EMPLOYMENT PERCENTAGE DURING
4 INTERIM PERIOD.—

5 “(i) DEFINITION.—In this subpara-
6 graph, the term ‘interim period’ means the
7 period beginning on the date on which the
8 Administrator determines that a HUBZone
9 small business concern is qualified under
10 subparagraph (A) and ending on the day
11 before the date on which a contract under
12 the HUBZone program for which the
13 HUBZone small business concern submits
14 a bid is awarded.

15 “(ii) INTERIM PERIOD.—During the
16 interim period, the Administrator may not
17 determine that the HUBZone small busi-
18 ness is not qualified under subparagraph
19 (A) based on a failure to meet the applica-
20 ble employment percentage under subpara-
21 graph (A)(i)(I), unless the HUBZone small
22 business concern—

23 “(I) has not attempted to main-
24 tain the applicable employment per-

1 centage under subparagraph (A)(i)(I);

2 or

3 “(II) does not meet the applica-

4 ble employment percentage—

5 “(aa) on the date on which

6 the HUBZone small business

7 concern submits a bid for a con-

8 tract under the HUBZone pro-

9 gram; or

10 “(bb) on the date on which

11 the HUBZone small business

12 concern is awarded a contract

13 under the HUBZone program.”;

14 and

15 (2) by adding at the end the following:

16 “(8) HUBZONE PROGRAM.—The term

17 ‘HUBZone program’ means the program established

18 under section 31.

19 “(9) HUBZONE MAP.—The term ‘HUBZone

20 map’ means the map used by the Administration to

21 identify HUBZones.”.

22 (d) REDESIGNATED AREAS.—Section 3(p)(4)(C)(i) of

23 the Small Business Act (15 U.S.C. 632(p)(4)(C)(i)) is

24 amended to read as follows:

1 “(i) 3 years after the first date on
2 which the Administrator publishes a
3 HUBZone map that is based on the results
4 from the 2010 decennial census; or”.

5 **SEC. 7. ANNUAL REPORT ON SUSPENSION, DEBARMENT,**
6 **AND PROSECUTION.**

7 The Administrator shall submit an annual report to
8 the Committee on Small Business and Entrepreneurship
9 of the Senate and the Committee on Small Business of
10 the House of Representatives that contains—

11 (1) the number of debarments from participa-
12 tion in programs of the Administration issued by the
13 Administrator during the 1-year period preceding
14 the date of the report, including—

15 (A) the number of debarments that were
16 based on a conviction; and

17 (B) the number of debarments that were
18 fact-based and did not involve a conviction;

19 (2) the number of suspensions from participa-
20 tion in programs of the Administration issued by the
21 Administrator during the 1-year period preceding
22 the date of the report, including—

23 (A) the number of suspensions issued that
24 were based upon indictments; and

1 (B) the number of suspensions issued that
2 were fact-based and did not involve an indict-
3 ment;

4 (3) the number of suspension and debarments
5 issued by the Administrator during the 1-year period
6 preceding the date of the report that were based
7 upon referrals from offices of the Administration,
8 other than the Office of Inspector General;

9 (4) the number of suspension and debarments
10 issued by the Administrator during the 1-year period
11 preceding the date of the report based upon referrals
12 from the Office of Inspector General; and

13 (5) the number of persons that the Adminis-
14 trator declined to debar or suspend after a referral
15 described in paragraph (8), and the reason for each
16 such decision.

Passed the Senate September 21, 2011.

Attest: NANCY ERICKSON,
Secretary.