

GOVERNMENT EFFICIENCY THROUGH SMALL BUSINESS
 CONTRACTING ACT OF 2012

DECEMBER 21, 2012.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Small Business,
 submitted the following

R E P O R T

[To accompany H.R. 3850]

The Committee on Small Business, to whom was referred the bill
 (H.R. 3850) to amend the Small Business Act with respect to goals
 for procurement contracts awarded to small business concerns, and
 for other purposes, having considered the same, report favorably
 thereon with an amendment and recommend that the bill as
 amended do pass.

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I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

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

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

“(g) **GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.**—”.

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

“(1) **GOVERNMENTWIDE GOALS.**—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

“(A) The Governmentwide goal for participation by small business concerns shall be established at not less than 25 percent of the total value of all prime contract awards for each fiscal year and 40 percent of the total value of all subcontract awards for each fiscal year.

“(B) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and at not less than 3 percent of the total value of all subcontract awards for each fiscal year.

“(C) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and at not less than 3 percent of the total value of all subcontract awards for each fiscal year.

“(D) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and at not less than 5 percent of the total value of all subcontract awards for each fiscal year.

“(E) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and at not less than 5 percent of the total value of all subcontract awards for each fiscal year.”.

(c) **AGENCY GOALS.**—Paragraph (2) of section 15(g) of such Act (15 U.S.C. 644(g)) is amended to read as follows:

“(2) **AGENCY GOALS.**—

“(A) **ESTABLISHMENT.**—The head of each Federal agency shall annually establish, for the agency that individual heads, goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

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

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

“(ii) **REQUIREMENT TO MEET OR EXCEED GOVERNMENTWIDE GOALS.**—With respect to each goal for a fiscal year established under subparagraph (A) for a category of small business concern, the participation percentage applicable to such goal may not be less than the participation percentage applicable to the Governmentwide goal for such fiscal year established under paragraph (1) for such category.

“(C) **CONSULTATION REQUIRED.**—

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

“(ii) **DISAGREEMENTS.**—If the Administrator and the head of a Federal agency fail to agree on a goal established under subparagraph (A), the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

“(D) **PLAN FOR ACHIEVING GOALS.**—After establishing goals under subparagraph (A) for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals, which shall apportion responsibilities among the employees of such agency having procurement powers.

“(E) EXPANDED PARTICIPATION.—In establishing goals under subparagraph (A), the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

“(F) CONSIDERATION.—The head of each Federal agency, in attempting to attain expanded participation under subparagraph (E), shall consider—

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

“(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

“(G) COMMUNICATION REGARDING GOALS.—

“(i) IMPORTANCE OF ACHIEVING GOALS.—Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

“(ii) PROCUREMENT EMPLOYEES OR PROGRAM MANAGERS DESCRIBED.—A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.”.

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

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

“(4) DETERMINATIONS OF THE TOTAL VALUE OF CONTRACT AWARDS.—For purposes of the goals established under paragraphs (1) and (2), the total value of contract awards for a fiscal year may not be determined in a manner that excludes the value of a contract based on—

“(A) where the contract is awarded;

“(B) where the contract is performed;

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

“(D) whether funding for the contract is made available in an appropriations Act, if the contract is subject to the Competition in Contracting Act of 1984; or

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

SEC. 3. REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.

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

“(h) REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

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

“(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

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

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

“(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public website, a report that includes—

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

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

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

“(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2)(A) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, except that the Administrator must concur with each remediation plan;

“(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

- “(i) small business concerns—
 - “(I) in the aggregate;
 - “(II) through sole source contracts;
 - “(III) through competitions restricted to small business concerns;
 - and
 - “(IV) through unrestricted competition;
- “(ii) small business concerns owned and controlled by service-disabled veterans—
 - “(I) in the aggregate;
 - “(II) through sole source contracts;
 - “(III) through competitions restricted to small business concerns;
 - “(IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans; and
 - “(V) through unrestricted competition;
- “(iii) qualified HUBZone small business concerns—
 - “(I) in the aggregate;
 - “(II) through sole source contracts;
 - “(III) through competitions restricted to small business concerns;
 - “(IV) through competitions restricted to qualified HUBZone small business concerns;
 - “(V) through unrestricted competition where a price evaluation preference was used; and
 - “(VI) through unrestricted competition where a price evaluation preference was not used;
- “(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—
 - “(I) in the aggregate;
 - “(II) through sole source contracts;
 - “(III) through competitions restricted to small business concerns;
 - “(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
 - “(V) through unrestricted competition; and
 - “(VI) by reason of that concern’s certification as a small business owned and controlled by socially and economically disadvantaged individuals;
- “(v) small business concerns owned by an Alaska Native Corporation—
 - “(I) in the aggregate;
 - “(II) through sole source contracts;
 - “(III) through competitions restricted to small business concerns;
 - “(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
 - “(V) through unrestricted competition; and
- “(vi) small business concerns owned and controlled by women—
 - “(I) in the aggregate;
 - “(II) through competitions restricted to small business concerns;
 - “(III) through competitions restricted using the authority under section 8(m)(2);
 - “(IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used; and
 - “(V) through unrestricted competition; and

“(F) for the Federal Government and each Federal agency, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically

disadvantaged individuals, and small business concerns owned and controlled by women.”.

SEC. 4. SENIOR EXECUTIVES.

(a) TRAINING.—Programs established for the development of senior executives under section 3396(a) of title 5, United States Code, shall include training with respect to Federal procurement requirements, including contracting requirements under the Small Business Act (15 U.S.C. 631 et seq.).

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

(c) INCENTIVE AWARDS.—If a Federal agency does not achieve, with respect to a fiscal year, a goal established by the head of such agency under section 15(g)(2)(A) of the Small Business Act (15 U.S.C. 644(g)(2)(A)), a senior executive within that agency may not receive, during the succeeding fiscal year, any incentive award under subchapter I of chapter 45 of title 5, United States Code.

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

SEC. 5. SENSE OF CONGRESS.

It is the sense of Congress that the contracting provisions of the Small Business Act shall apply to the leasing of buildings and office space by the United States, and shall not apply to any leasing transaction between private parties.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 3850, the “Government Efficiency through Small Business Contracting Act of 2012,” is to amend the Small Business Act (the Act)¹ to increase prime contracting and subcontracting opportunities for small businesses. Small business contractors bring necessary competition to the government marketplace, add innovation, and create new jobs. Contracting officers, however, generally prefer contractors with whom they have experience; typically, this preference hampers the ability of small businesses to obtain federal contracts. Thus, the top 100 contractors to the federal government routinely receive 25 percent of the total value of contracts spent in a fiscal year, whereas the over 350,000 small businesses competing for federal contracts struggle to eclipse the 20 percent mark. This overreliance on a limited corps of contractors is not good for the industrial base, competition, innovation, job creation, or the needs of the federal government.

H.R. 3850 seeks to promote small business contracting in five ways. First, it increases the prime contracting goal for small business concerns² from 23 percent of all federal prime contract dollars to 25 percent.³ Second, it establishes a government-wide small business subcontracting goal of 40 percent because the administratively set goals for small businesses have been decreasing. Third, it ensures that no department or agency is allowed to have a small business prime contracting goal that is less than the government-wide small business prime contracting goal of 25 percent. Fourth, it defines the universe of contracts that are to be used to calculate

¹Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232 was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85-536, § 1, 72m Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631-657q.

²The Act uses the term “small business concern.” However, this report will use the terms “small business” and “small business concern” interchangeably unless the context requires a specific reference to the term “small business concern.”

³If contract spending remains constant, this will result in approximately \$11 billion in new contracts being awarded to small businesses each year, and if contract spending declines, it will ensure that small businesses are not the first to have their contracts cut.

achievement of procurement goals, in order to counter the Small Business Administration's (SBA) decision (which contradicts the plain language of the Act) to exclude approximately 20 percent of contract dollars from the goal calculation.⁴ Finally, H.R. 3850 creates an incentive for executives to ensure that the small business goals are met by denying them performance awards or sabbaticals should an agency fail to meet those goals.

III. BACKGROUND AND NEED FOR LEGISLATION

The Act finds that awarding prime contracts to small businesses serves the nation in three ways. First, small business contracting is in "the interest of maintaining or mobilizing the Nation's full productive capacity."⁵ Second, small business contracting is "in the interest of war or national defense programs."⁶ Third, it serves "the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government in each industry category are placed with small-business concerns."⁷ To fulfill these three objectives, statutorily based small business goals have been used for approximately thirty-four years.

Since the enactment of Public Law 95-507⁸ in 1978, the SBA has been responsible for negotiating small business contracting and subcontracting goals with federal departments and agencies. A decade later, President Reagan signed the Business Opportunity Development Reform Act of 1988 (BODRA), which for the first time established a statutorily mandated government-wide small business goal of "not less than 20 percent of the total value of all prime contract awards for each Fiscal Year." This goal was increased to 23 percent by the Small Business Reauthorization Act of 1997 (SBRA). According to the SBA, in Fiscal Year 2010, small businesses received 22.7 percent of all prime contract dollars. Therefore, this bill continues the work of the past 34 years by increasing the goal to 25 percent. Each time the goal has previously been increased, small business contracting, with its inherent benefits, has increased. Additionally, given decreases in federal contract spending, this increase will protect small businesses against losing hard gotten gains. Thus, after 15 years of a 23 percent goal, the bill will provide additional support for small business contractors.

The bill also furthers the goals of Public Law 95-507, BODRA and SBRA by mandating that no agency have a goal less than the government-wide goal. Agencies, due to their varying missions, contract for different goods and services. However, if the intention of the Act is to ensure that a fair portion all government contracts "in each industry category" are placed with small businesses, then no agency should be allowed to shirk its responsibility towards small businesses.

In the recent past, SBA has allowed some agencies to have goals that are lower than the government-wide goal, which means that small businesses may not have the same opportunities in some industries as they do in others. Thus, by failing to honor the third

⁴ A discussion of which contracts are excluded may be found in Section 2(d) of the section-by-section analysis.

⁵ Small Business Act, § 15(a), 15 U.S.C. § 644(a).

⁶ *Id.*

⁷ *Id.*

⁸ This Act has no common name and is simply An Act of October 24, 1978.

purpose of the Act in respect to contracting, agencies neuter the first two objectives—maintaining the full productive capacity and supporting national defense programs. This is particularly the case with the Department of Defense (DoD) and the Department of Energy (DOE). For fiscal year 2010, SBA and DoD negotiated a DoD goal of 22.8 percent,⁹ and SBA and DOE negotiated a goal of only 6 percent.¹⁰ Combined, these two agencies accounted for nearly 75 percent of government-wide contracting dollars spent that year.¹¹ Even if DoD and DOE had met their respective goals, this still would have meant that each of the other agencies needed to contract at least 30 percent of their spend to small businesses to meet the overall goal. Moreover, the lower goals for DoD and DOE would have further denied small businesses opportunities in the very areas most crucial to the war and defense programs the Act is meant to address.¹²

When the concept of goals was introduced through the 1978 and 1988 legislation, none of the Congressional authors believed that the phrase “the total value of all prime contract awards for each fiscal year” needed further explanation to define the types of contracts to which the goal applied, or that agencies needed encouragement to reach the goals. However, in 1991 the Office of Federal Procurement Policy (OFPP) began allowing¹³ DOE to count sub-contracts awarded by its management and operations (M&O) contractors as if they were prime contracts awarded by the DOE.¹⁴ This allowed DOE to count 18 percent of its prime contract dollars as being awarded to small businesses until 1999, when OFPP reversed its decision on the M&O contracts,¹⁵ and it became apparent that DOE had only been awarding 3 percent of its prime contract dollars to small businesses. As previously noted, over a decade later, DOE only has a goal of 6 percent small business participation, so the goals are clearly not motivating the agency to improve its performance.

After OFPP changed course on the inclusion of M&O sub-contracts, SBA in rules published in 2003¹⁶ began allowing agencies to exclude certain types of contracts from consideration before the goal achievements were calculated. Under this method, approximately 20 percent of all prime contract dollars are excluded from the contracting base before the goals are calculated, thus inflating the performance of all agencies. Even with these exclusions, agencies are failing to meet their goals, and the government-wide goal has not been met since 2005.

To make the goals themselves more meaningful, the Government Efficiency Through Small Business Contracting Act of 2012 does three things. First, it defines what types of contracts must be in-

⁹SBA, Department of Defense Procurement Scorecard FY 2010 (2011) available at http://www.sba.gov/sites/default/files/files/FY10%20SB%20Procurement%20Scorecard_FINAL_DoD.pdf.

¹⁰SBA, Department of Energy Procurement Scorecard FY 2010 (2011) available at http://www.sba.gov/sites/default/files/files/FY10%20SB%20Procurement%20Scorecard_FINAL_ENERGY.pdf.

¹¹DoD spent \$375.5 billion on contracts, DOE \$25 billion out of a federal total of \$536 billion. See <http://usaspending.gov/>.

¹²15 U.S.C. § 644(a).

¹³OFPP Policy Letter 91-1 (1991)

¹⁴See, e.g., Acquisition Regulation: Implementation of Section 3021 of the Energy Policy Act of 1992, Notice of Proposed Rulemaking, 59 Fed. Reg. 35,294, 35,295 (July 11, 1994).

¹⁵OFPP Policy Letter 99-1 (1999) rescinding OFPP Policy Letter 91-1.

¹⁶SBA, Goaling Guidelines for the Small Business Preference Programs for Prime and Sub-contract Federal Procurement Goals and Achievements, 68 Fed. Reg. 43,566 (July 23, 2003).

cluded in the goaling base. Examining Fiscal Year 2010 data, this essentially adds \$100 billion to the denominator and \$10 billion to the numerator when calculating small business goal achievement. Recalculating using the more appropriate universe of contracts indicates that the federal government achievement is only 20.3 percent. Second, the bill holds senior executives in agencies accountable for meeting the goals, and imposes consequences for the failure to do so. Specifically, these senior executives will not be eligible for performance awards, commonly referred to as bonuses, nor will they be allowed to take paid sabbaticals if the goals are not met. This will encourage senior executives to remove barriers to small business participation and will finally give teeth to the achievement of the goals. Finally, the bill also adds granularity to the report on goal achievement currently provided by the SBA. Instead of simply reporting a dollar value and percentage for each category of goals, as SBA currently does, the new reports will be more nuanced, explaining whether a small business concern won a contract through full and open competition or as the result of a contracting program established in the Act. This data will be invaluable as the Committee assesses the health of the small business contracting programs.

Public Law 95-507 also sought to increase subcontracting opportunities for small businesses by requiring that other than small businesses receiving prime contracts negotiate subcontracting plans with the federal government that would incorporate goals for the use of small businesses.¹⁷ According to Committee reports, this requirement was added because small businesses were receiving only 37.5 percent of subcontract dollars.¹⁸ Since that time, it has been the responsibility of the SBA to establish a government-wide subcontracting goal. However, the current SBA-established goal is 35.9 percent, which is 1.6 percent less than the actual results thirty-five years ago that spurred the creation of government-wide subcontracting goals. To prevent further backsliding, the bill establishes the government-wide goal at 40 percent.

Ideally, the changes to the Act will result in \$11 billion in new contracting opportunities for small businesses. However, based on President Obama's projected defense spending cuts and cuts that may occur as a result of the Budget Control Act of 2011, small business contracts at DoD alone are expected to fall by approximately \$7.5 billion per year.¹⁹ This does not account for spending cuts at civilian agencies, or the fact that contracting officers find it easier to cut small business contracts than those held by large businesses simply because small businesses lack the clout to complain. However, DoD contracting accounts for approximately 70 percent of federal contract spending, so if similar cuts occur in other agencies, the increased goal in this bill should simply mitigate the effect of the reduced contracting on small businesses.

¹⁷ 15 U.S.C. § 637(d).

¹⁸ H.R. Rep. No. 95-949, at 5 (1978).

¹⁹ Center for Security Policy, The National Defense Breakdown Economic Impact Report, (Feb. 2012). The full report can be found at <http://forthecommondefense.org/reports/National%202%20pager%20pdf.pdf>.

IV. HEARINGS

In the 112th Congress, the Committee held two hearings that looked at the prime contract and subcontract goals. On September 14, 2011, the Committee held a hearing titled, “Beyond the Size Standards: The Sustainability of Small Businesses Graduates.” At the hearing, witnesses testified that the small business goals are not being met, that there are no consequences for this failure, and that the numbers being reported exclude approximately \$100 billion in contracts. The Subcommittee on Contracting and the Workforce then met on October 6, 2011, for a hearing titled “Subpar Subcontracting: Challenges for Small Businesses Contractors.” In this case, the witnesses told the Committee about the declining subcontracting goals, and the lack of commitment to meeting the goals by agencies and some subcontractors. At each hearing, the small business witnesses and the trade associations representing them were adamant that the goals needed to be strengthened.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 7, 2012 and ordered H.R. 3850 reported, as amended, to the House by a voice vote at 3:50 pm. During the markup, five amendments were offered. Three amendments were adopted and two amendments were withdrawn. Disposition of the amendments is addressed below and is based on the order amendments were filed with the Clerk of the Committee and not necessarily in the order that they were considered at the markup.

Amendment Number One filed by Ms. Hahn (D-CA) requires the annual report issued by the SBA on goaling achievement be made publicly available using the Internet, and made technical amendments. The amendment was adopted by voice vote at 1:20 pm.

Amendment Number Two filed by Ms. Chu (D-CA) requires that the annual goaling report subdivide the portion of the report on achievement of the goal for contracts awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals (SDB) goal by socio-economic category. The amendment was adopted by voice vote at 1:24 pm.

Amendment Number Three filed by Mr. Peters (D-MI) will increase the government-wide prime contracting and subcontracting goals for SDB from 5 percent to 7.5 percent for each fiscal year. The amendment was withdrawn by unanimous consent.

Amendment Number Four filed by Ms. Ellmers (R-NC) expressed a sense of Congress that the contracting provisions of the Small Business Act shall apply to commercial leasing services. The amendment was withdrawn by unanimous consent.

Amendment Number Five filed by Ms. Ellmers (R-NC) expressed a sense of Congress that the contracting provisions of the Small Business Act shall apply to the leasing of commercial buildings and office space by the federal government but not to transactions between private parties. The amendment was adopted by voice vote at 3:49 pm.

AMENDMENT TO H.R. 3850

OFFERED BY MS. HAHN OF CALIFORNIA

Page 8, line 5, strike “paragraph (2)” and insert “subsection (h)(2)”.

Page 8, beginning on line 23, strike “competition in the Contract Act” and insert “the Competition in Contracting Act of 1984”.

Page 10, line 11, insert after “President and Congress” the following: “, and to make available on a public website,”.

AMENDMENT TO H.R. 3850

OFFERED BY MS. CHU OF CALIFORNIA

Page 13, line 9, strike “and”.

Page 13, line 11, insert “and” at the end.

Page 13, insert after line 11 the following (and redesignate provisions accordingly):

(VI) by reason of that concern’s certification as a small business owned and controlled by socially and economically disadvantaged individuals;

AMENDMENT TO H.R. 3850

OFFERED BY MR. PETERS OF MICHIGAN

Page 3, line 18, strike “5 percent” and insert “7.5 percent”.

Page 3, line 19, strike “5 percent” and insert “7.5 percent”.

VI. SECTION-BY-SECTION ANALYSIS OF H.R. 3850 AS AMENDED

Section 1. Short Title

This Section designates the bill as the “Government Efficiency through Small Business Contracting Act of 2012.”

*Section 2. Goals for Procurement Contracts Awarded to Small Business Concerns**Subsection (a)—Subsection Enumerator*

This subsection designates section 15(g) of the Small Business Act (the Act), 15 U.S.C. § 644(g), as “Goals for Procurement Contracts Awarded to Small Business Concerns.”

Subsection (b)—Government-wide Goals

Paragraph (1) of subsection 15(g) of the Act currently requires the President to annually establish a government-wide goal of awarding at least 23 percent of the total value of prime contracts awards for each fiscal year to small business concerns. The Act also established goals for various subcategories of small businesses: small business concerns owned and controlled by service disabled veterans (SDVOSBs); qualified HUBZone small business concerns (HUBZone firms); small businesses owned by socially and economically-disadvantaged individuals (SDBs); and small business concerns owned and controlled by women (WOSBs). It further requires the President to establish a minimum goal of awarding 3 percent of the total value of all prime contract and subcontract awards for each fiscal year to SDVOSBs. The current statutory goal for HUBZone firms is 3 percent of the total value of all prime contract

and subcontract awards. The government-wide goals for SDBs and WOSBs are each established as at least 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

Section 2(b) of the bill modifies the structure of section 15(g)(1) of the Act by creating separate subparagraphs for each specific goal. Unless specified below, the change is made to provide clarity rather than make substantive changes.

Subparagraph (A) increases the government-wide goal from 23 percent of the total value of prime contracts awards for each fiscal year to 25 percent of the total value of prime contract awards. Subparagraph (A) also establishes a government-wide goal of awarding small business concerns 40 percent of the total value of subcontract awards for each fiscal year. This is necessary because the voluntary subcontracting goal established by the Executive Branch has been declining, from 40 percent in fiscal year 2003 to 35.9 in fiscal year 2010.²⁰ Given that the Executive Branch has failed to institute goals leading to an increase in opportunities for small businesses, this bill will legislate a more aspirational goal.

Subparagraphs (B)–(E) restate the current small business goals for SDVOSB, HUBZone, SDBs and WOSBs. However, in subparagraph (C), the language pertaining to HUBZone goals no longer includes the goals from fiscal years 1999 through 2003. Now that the program is fully operational, goals prior to 2003 clutter an already overcluttered Act.

Subsection (c)—Agency Goals

Paragraph (2) of subsection 15(g) of the Act currently requires the head of each Federal agency, in consultation with the Administrator, to establish agency-specific prime contracting and subcontracting goals for small business concerns and the subcategories thereof. In cases where the head of the Federal agency and the Administrator disagree, the Administrator of the Office of Federal Procurement makes the final goal determination. The Act also requires each agency to continually strive to increase participation by small businesses in each industry category, and to increase contracts awarded through full and open competition as well as through restricted competition. Finally, paragraph (2) requires that agency employees with procurement or program management functions be educated on the importance of the goals so that they will be better prepared to meet those goals.

Historically, the Administrator refused to negotiate agency specific goals that were lower than the government-wide goal. Clearly, it is more difficult to achieve the government-wide goal if some agencies have lower goals. Allowing some agencies to have goals that are lower than the government-wide goal means that small businesses may not have the same opportunities in some industries as they do in others, which, in turn, results in a less vibrant industrial base, as might be the case for small businesses providing goods and services to DoD and DOE, as already discussed.

Consequently, subsection (c) of the bill amends paragraph (2) to require that each agency has a goal at least as high as the govern-

²⁰ SBA, Governmentwide 2010 Small Business Procurement Scorecard (2011). Interestingly, in 2003, the goal was 40 percent. See also SBA, Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements, 6 (2003).

ment-wide goal. It further requires that each agency develop a plan for achieving its goals, and that the plans apportion responsibility for the goals among the agency employees with procurement powers. These changes will create more opportunities for small businesses at the agencies responsible for most federal contracting, improve the likelihood of achieving the government-wide goal, and require that each agency has a plan for how it will achieve the goals. It also furthers the aims of the Act regarding the health of the industrial base by making sure the federal government has access to a diverse group of small businesses ready to assist the nation in times of crisis.

Subsection (d)—Enforcement; Determination of the Total Value of Contract Awards

Subsection (d) of the bill adds two new paragraphs to section 15(g) of the Act. The first, paragraph (3), requires that the Administrator issue the annual report to Congress detailing how the government performed in contracting with small business concerns no later than 120 days after the end of the fiscal year. In fiscal year 2010, this report was not issued until June 2011; in prior years the report came out even later. A report that is issued after two-thirds of the fiscal year has elapsed leaves agencies with very little time to adjust their behavior and improve their small business performance. Thus, the Administrator issuing the report in a timely fashion will enable agencies to meet their goals in subsequent years and achieve the objectives set forth in the Act.

Section 15(g)(1) currently requires that the goal is based on the “total value of all prime contract awards for each fiscal year.” Although the term “all” seems to be abundantly clear, it is not self-evident to the Administrator, who currently excludes about 20 percent of all prime contract dollars spent in a fiscal year, arguing that these contracts are not suitable for award to small businesses based on their place of award, performance, use of non-appropriated funds, or applicability of the Federal Acquisition Regulation.²¹ In addition, the Administrator excludes contracts that are required by statute to be performed by entities other than small businesses, such as Unicor—the federal prison industries program.²² In each case, the exclusion is unwarranted because there is no statutory basis for the exclusions since the term “all” is not ambiguous.

Even if the term “all” does not mean “all” as Orwell might have concluded, the exclusions still make no sense. For those contracts that the Administrator determined were not suitable to award to small businesses, Committee staff analysis indicates that small businesses won approximately 10 percent of such contracts in fiscal year 2010.²³ For statutory exclusions, it simply means that additional contracts must be awarded to make up for those prime contracts that must be awarded to mandatory sources such as Unicor.

²¹SBA, *Goaling Guidelines for the Small Business Preference Programs 3* (2003). Apparently, the Administrator’s understanding of the word “all” is akin to that of the animals in George Orwell’s classic novel *Animal Farm*, in which all animals are created equal but some are more equal than others.

²²*Id.*, see also 18 U.S.C. § 4124.

²³Generated through a report run using the Federal Procurement Data System, on file with the Committee.

Consequently, the bill adds a paragraph (4) that seeks to clarify what is meant by the words “total value of all prime contract awards for each fiscal year.” The bill specifies that for the purposes of the government-wide and agency-specific contracting goals, the total dollar value of contracts awarded must include contracts without respect to their place of award, place of performance, the applicability of the FAR, or whether a mandatory source is used. Furthermore, any contract that is subject to the Competition in Contracting Act²⁴ (CICA) is covered, even if it is awarded using non-appropriated funds. By using a reference to CICA, the Committee intends to exclude those contracts awarded by non-appropriated funding instrumentalities that are not considered contracts with the federal government.

Section 3. Reporting on Goals for Procurement Contracts Awarded to Small Business Concerns

Section 3 amends section 15(h) of the Act, which addresses reporting on goals enumerated in section 15(g). Currently, section 15(h)(1) requires that the head of each agency report to the Administrator on an annual basis, detailing the agency’s accomplishments for each of the small business goals, and justifying any failure to meet the goals. The Administrator is then directed in section 15(h)(2) to analyze and compile the diverse reports into an annual report providing the government-wide goal results to the Committee on Small Business, Committee on Small Business and Entrepreneurship (the Committees), and the President. In addition to providing the overall goals, the report also includes the number and dollar value of contracts awarded to firms covered by the goals that are awarded through sole source contracts, through SDB set-asides, through HUBZone set-asides, and through full and open competition.

The bill retains the concept of agency-level reports consolidated into a government-wide report, but makes one minor change to the agency-level reports, and four important changes to the government-wide report. For the agency-level reports, the Administrator must forward the reports to the Committees within 60 days as part of the government-wide report. For the government-wide report, the Administrator is directed to include a remediation plan for any agency not meeting its goals, with such plan to be developed by the head of the contracting agency and concurred with by the Administrator. Additionally, the government-wide report must provide much greater detail regarding how awards to small business concerns and the subcategories thereof were made. Specifically, for each group, the Administrator must now report the aggregate results as well as those using each of the possible procurement methods, such as sole source contracting, set-aside contracting, or full and open competition. For SDBs, the Administrator must also identify which socio-economic categories the firms used to qualify for the program. The additional detail should not incur extra costs because the data already are available through the Federal Procurement Data System. This will provide Congress and the federal procurement community more granular data on the effectiveness of all the contracting programs in the Act.

²⁴ 98 Stat. 1175 (1984), codified at 41 U.S.C. 3301 et seq.

The bill requires that the subcontracting data reported to the Committees and the President analyze the industry category of the subcontractor. This is important because subcontracting is often used to mitigate for a lack of prime contracting opportunities, but if the subcontracting is in an unrelated or only tangentially-related industry, it may not successfully accomplish this aim. Again, this will provide greater insight into the assistance offered to small businesses through the different types of subcontracting plans²⁵ and the types of businesses that benefit from subcontracts. Finally, the bill requires that the goaling report be made publicly available on a website. Although the report is made publicly available on the website of the Federal Procurement Data System, such placement is at the discretion of the Executive Branch. Given the importance of the report, public availability should not rest on the whims of federal agency officials and codification of Internet availability is appropriate.

Section 4. Senior Executives

The issues in section 4 are not currently addressed in the Act. Senior executives or members of the Senior Executive Service (SES), are federal employees serving in political and career managerial, supervisory, and policy positions classified above civil service's General Schedule grade 15 or equivalent positions in the Executive Branch.²⁶ For 2012, these positions pay a base salary between \$119,554 and \$179,700, and with bonuses may receive compensation up to \$230,700.²⁷ Additionally, career SES employees may take sabbaticals of up to 11 months to pursue study or uncompensated work, during which time the employee retains salary, benefits and potentially travel and per diem costs.²⁸

Given their senior role within each agency, the Committee recognizes that SES members play a special role in creating contracting opportunities for small businesses. First, the Chief Acquisition Officer and Senior Procurement Executives create the agency's procurement policies and oversee the contracting staff, thus creating the initial framework for small business participation. Furthermore, all SES members create or oversee those developing the actual procurement requirements. Contracting personnel only can make purchases to fulfill the requirements of the office generating the request and have limited ability to change those requirements to make the resultant contract suitable for small businesses. It is the SES members working in the program office, as the Chief Financial Officer, as the Chief Information Officer or the like, who oversee the initial determination of the requirements. It is the definition of requirements that often controls a small business's opportunity to compete.

Subsection (a)—Training

Given the important role of SES, subsection (a) requires that the SES development program provide training to SES candidates on procurement in general and small business contracting in par-

²⁵ For example, this should help the Congress assess whether different types of small businesses benefit from commercial type subcontracting plans than benefit from contract specific subcontracting plans of the DoD comprehensive test subcontracting plan.

²⁶ 5 U.S.C. § 3132(a).

²⁷ *Id.* at § 5307.

²⁸ *Id.* at § 3396.

ticular. This will ensure that new SES members are cognizant of the rules regarding procurement and the tools available that allow small business concerns to compete in the federal procurement arena.

Subsection (b)—Sabbaticals

As discussed above, sabbaticals are a unique benefit to SES members. Such opportunities only should be available to successful agencies as a reward and agencies that do not meet their small business goals should not be able to reward their most senior personnel if they fail to meet the standards established by Congress for contracting with small business concerns.²⁹ Therefore, subsection (b) denies this benefit to any SES employed by an agency that failed to meet the agency level goals in the revised section 15(g)(2) of the Act.

Subsection (c)—Incentive Awards

SES performance appraisals rate SES members on their fiscal year's accomplishments. The rating scale is from Level 1 to Level 5, with Level 1 deemed "unsatisfactory" and Level 5 as "outstanding."³⁰ Only SES employees with a rating above Level 3, thereby deemed "fully successful," are eligible for incentive awards or bonuses. While each SES employee is rated on program specific factors, they are all rated on five critical elements as well: leading change, leading people, business acumen, building coalitions and results driven.³¹ Of these, the results driven factor counts for at least 40 percent, meaning that an SES employee cannot receive a bonus if the employee fails to achieve "measurable outputs and outcomes clearly aligned to organizational goals and objectives" that have a "transparent alignment to relevant agency or organizational goals."³² However, despite this guidance, SES employees continue to receive bonuses at agencies that are not successfully meeting the relevant agency's small business goals.

Consequently, Subsection (c) does not allow SES to receive bonuses if their agency does not meet the agency level goals in the revised section 15(g)(2) of the Act. No agency is fully successful, nor is any SES fully successful, if obligations to small businesses are not met. Further, the Committee believes that this change may have the additional benefit of encouraging SES members to embrace the first of their performance elements—leading change—to seek out and remove barriers to small business participation in federal procurement. While some have cautioned that this may lead to the use of small businesses that are not qualified to perform contracts, no contracting officer would put his or her authority to issue contracts in jeopardy by ignoring the requirements of Part 9 of the Federal Acquisition Regulations dealing with contractor responsibility. Although at first blush this may seem unduly punitive, many agencies already meet or exceed their small business goals,

²⁹ While it is true that private sector executives receive perks and salary increases even when their companies are performing poorly, federal employees serve a higher interest (the public good) and should not be rewarded for failing to achieve the objectives set by Congress.

³⁰ Memorandum from John Berry, Director, Office of Personnel Management and Jeffrey Zients, Chief Performance Officer, Office of Management and Budget, "Senior Executive Service Performance Appraisal System" (Jan. 2012), available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4514>.

³¹ *Id.*

³² *Id.*

so the consequences of this section should fall only on the most senior and highly compensated employees of a few agencies. It will not jeopardize their salaries, only their incentive payments, and will lead to a culture of accountability as it relates to small business opportunities.

Section 5. Sense of Congress

Section 5 is sense of Congress that the contracting provisions of the Act “shall apply to the leasing of buildings and offices space by the United States, and shall not apply to any leasing transaction between private parties.” The Committee has learned that the General Services Administration (GSA) has bundled all contracts for real property brokerage services to the exclusion of small businesses. While contract bundling will be addressed through other legislation, this sense of Congress reflects the Committee’s frustration that the agency with almost exclusive purview over leasing and other real estate transaction services for buildings, space, land and property would act in a way that excludes small business participation as prime contractors. Therefore, this section states the opinion of Congress that all the provisions of the Act apply to GSA’s procurement of real property on behalf of the federal government.

VII. UNFUNDED MANDATES

H.R. 3850 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104-4, and would impose no costs on state, local or tribal governments.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that any additional appropriation will be required due to the enactment of H.R. 3850. H.R. 3850 does not direct new spending, but instead addresses the apportionment of current spending between small businesses and other-than-small businesses. Tying senior executive bonuses to attainment of the small business goals may instead save money that would otherwise have been expended.

IX. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of Rule X of the rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3850 are incorporated into the descriptive portions of this report.

X. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cls. 1, 3, and 18 and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XI. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 3850 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104-1.

XII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 3850 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XIII. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 3850 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XIV. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 3850 includes a number of provisions designed to improve the competitive viability of small businesses as federal prime and subcontractors and to improve agency compliance with the Small Business Act.

XV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *
 SEC. 15. (a) * * *
 * * * * *

[(g)(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards

for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract and subcontract awards for fiscal year 2003 and each fiscal year thereafter. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

[(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency.

[(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

[(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be

submitted to the Administrator for Federal Procurement Policy for final determination.

[(D) For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women.

[(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D), shall consider—

[(i) contracts awarded as the result of unrestricted competition; and

[(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

[(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

[(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

[(h)(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section.

[(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:

[(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women and the performance in attaining such goals.

[(B) The goals in effect for each agency and the agency's performance in attaining such goals.

[(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

[(D) The number and dollar value of contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women through—

[(i) noncompetitive negotiation,

[(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

[(iii) competition restricted to small business concerns, qualified HUBZone small business concerns, and

[(iv) unrestricted competitions, for each agency and on a Government-wide basis.

[(E) The number and dollar value of subcontracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

[(F) The number and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by women.

[(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).]

(g) GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

(1) GOVERNMENTWIDE GOALS.—*The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:*

(A) *The Governmentwide goal for participation by small business concerns shall be established at not less than 25 percent of the total value of all prime contract awards for each fiscal year and 40 percent of the total value of all subcontract awards for each fiscal year.*

(B) *The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and at not less than 3 percent of the total value of all subcontract awards for each fiscal year.*

(C) *The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and at not less than 3 percent of the total value of all subcontract awards for each fiscal year.*

(D) *The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and at not less than 5 percent of the total value of all subcontract awards for each fiscal year.*

(E) *The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and at not less than 5 percent of the total value of all subcontract awards for each fiscal year.*

(2) *AGENCY GOALS.—*

(A) *ESTABLISHMENT.—The head of each Federal agency shall annually establish, for the agency that individual heads, goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.*

(B) *RELATIONSHIP TO GOVERNMENTWIDE GOALS.—*

(i) *SCOPE.—The goals established by the head of a Federal agency under subparagraph (A) shall be in the same format as the goals established by the President under paragraph (1) and shall address both prime contract and subcontract awards.*

(ii) *REQUIREMENT TO MEET OR EXCEED GOVERNMENTWIDE GOALS.—With respect to each goal for a fiscal year established under subparagraph (A) for a category of small business concern, the participation percentage applicable to such goal may not be less than the participation percentage applicable to the Governmentwide goal for such fiscal year established under paragraph (1) for such category.*

(C) *CONSULTATION REQUIRED.—*

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

(ii) *DISAGREEMENTS.—If the Administrator and the head of a Federal agency fail to agree on a goal established under subparagraph (A), the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.*

(D) *PLAN FOR ACHIEVING GOALS.—After establishing goals under subparagraph (A) for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals, which shall apportion responsibilities among the employees of such agency having procurement powers.*

(E) *EXPANDED PARTICIPATION.—In establishing goals under subparagraph (A), the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts of such agency, including participation by small business concerns owned and con-*

trolled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(F) *CONSIDERATION.*—The head of each Federal agency, in attempting to attain expanded participation under subparagraph (E), shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

(G) *COMMUNICATION REGARDING GOALS.*—

(i) *IMPORTANCE OF ACHIEVING GOALS.*—Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

(ii) *PROCUREMENT EMPLOYEES OR PROGRAM MANAGERS DESCRIBED.*—A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

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

(4) *DETERMINATIONS OF THE TOTAL VALUE OF CONTRACT AWARDS.*—For purposes of the goals established under paragraphs (1) and (2), the total value of contract awards for a fiscal year may not be determined in a manner that excludes the value of a contract based on—

(A) where the contract is awarded;

(B) where the contract is performed;

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

(D) whether funding for the contract is made available in an appropriations Act, if the contract is subject to the Competition in Contracting Act of 1984; or

(E) whether the contract is subject to the Federal Acquisition Regulation.

(h) *REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.*—

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

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns

owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

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

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

(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public website, a report that includes—

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

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

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

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2)(A) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, except that the Administrator must concur with each remediation plan;

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

(i) small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns; and

(IV) through unrestricted competition;

(ii) small business concerns owned and controlled by service-disabled veterans—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans; and

(V) through unrestricted competition;

(iii) qualified HUBZone small business concerns—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to qualified HUBZone small business concerns;

(V) through unrestricted competition where a price evaluation preference was used; and

- (VI) through unrestricted competition where a price evaluation preference was not used;
- (iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—
- (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
 - (V) through unrestricted competition; and
 - (VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;
- (v) small business concerns owned by an Alaska Native Corporation—
- (I) in the aggregate;
 - (II) through sole source contracts;
 - (III) through competitions restricted to small business concerns;
 - (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and
 - (V) through unrestricted competition; and
- (vi) small business concerns owned and controlled by women—
- (I) in the aggregate;
 - (II) through competitions restricted to small business concerns;
 - (III) through competitions restricted using the authority under section 8(m)(2);
 - (IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used; and
 - (V) through unrestricted competition; and
- (F) for the Federal Government and each Federal agency, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

* * * * *