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HOUSE OF REPRESENTATIVES
REPORT
118–393

WOSB CERTIFICATION AND OPPORTUNITY EXPANSION ACT

FEBRUARY 20, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7105]

The Committee on Small Business, to whom was referred the bill (H.R. 7105) to establish requirements relating to certification of small business concerns owned and controlled by women for certain purposes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. Purpose and Bill Summary

On January 29, 2024, Rep. Velázquez and Rep. LaLota introduced H.R. 7105. The purpose of H.R. 7105, the "WOSB Certification and Opportunity Expansion Act," is to exclude certain self-certified firms from being counted in government-wide procurement goals.

II. Need for Legislation

The government has a goal to spend at least 5% of contracting award dollars with women owned small businesses. When agencies look to meet this goal, they often look to firms certified in the Small Business Administration's (SBA) Women Owned Small Business (WOSB) program or self-certified firms that check an online box that they are women owned. The SBA Inspector General has consistently identified self-certification as a risk for fraud. This bill will phase out self-certification in procurement goals and reduce the use of these firms when agencies award contracts set-aside for women small businesses.

III. Hearings

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 7105. The hearing titled "Leveling the Playing Field: The State of Small Business Contracting" discussed challenges small business contractors face while competing for government contracts.

IV. Committee Consideration

The Committee on Small Business met in open session, with a quorum being present, on January 31, 2024 and ordered H.R. 7105 reported to the House of Representatives. During the markup no amendments were offered.

V. Committee Votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 7105 to the House of Representatives at 12:05 p.m.

118th Congress, House Committee on Small Business
Vote Record

Date: Wednesday, Jan 31st, 2024

H.R.- 7105 Time of Vote: 12:05

Republicans	Aye	No	Present
Mr. Luetkemeyer (MO-03)	✓		
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)	✓		
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)	✓		
Mr. (La-Low-ta) Lalota (NY-01)	✓		
Ms. Maloy (UT-02)	✓		
Chairman Williams (TX-25)	✓		
TOTALS:			

Mr. Chairman _____ Votes _____

Mr. Chairman _____ Off _____, Votes _____

Mr. Chairman on that vote 24 Ayes 0 Nays and 0 Present

118th Congress, House Committee on Small Business
Vote Record

Date: Wednesday, Jan 31st, 2024

H.R.- 7105 Time of Vote:

Democrats	Aye	No	Present
Mr. Golden (ME-02)	✓		
Mr. M-fume (MD-07)	✓		
Mr. Phillips (MN-03)			
Mr. Landsman (OH-01)	✓		
Mr. Mc-Gar-vey (KY-03)	✓		
Ms. Glue-sen-kamp Perez (WA-03)	✓		
Ms. (Skull- ton) Scholten (MI-03)	✓		
Mr. (Tan-a-dar) Thanedar (MI-13)	✓		
Ms. (Chew) Chu (CA-28)	✓		
Ms. Davids (KS-03)	✓		
Mr. Pappas (NH-01)			
Ranking Member Velazquez (NY-07)	✓		
TOTALS:			

VI. SECTION-BY-SECTION OF H.R. 7105

Section 1—Short title

This section cites the bill as the "WOSB Certification and Opportunity Expansion Act".

Section 2—Exclusion of self-certified small business concerns owned and controlled by women from goals

This section allows only small businesses owned and controlled by women and certified in the WOSB program to be calculated in federal procurement goals. This takes effect two fiscal years after the SBA issues regulations.

This section further allows self-certified women owned small businesses to be included in the goals if they self-certify before the enactment of the previous provision, have filed a certification application with the SBA or a recognized certifying entity, and if they have not received an official determination by the SBA as to acceptance into the WOSB program.

The SBA is required to issue regulations within one year of passage.

The SBA is also required to provide quarterly briefings to the House and Senate Small Business Committees. The briefing shall include application numbers and approval timelines, costs, updates on outreach efforts, and recommendations for legislative authority or resources needed.

Finally, this section includes definitions and language to ensure that no additional funds are authorized to be appropriated to carry out the bill.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, 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 Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 7105 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. Oversight Findings & Recommendations

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 7105 are incorporated into the descriptive portions of this report.

X. Performance Goals and Objectives

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 7105 are to require quarterly briefings from the SBA on the implementation of this bill, potential resource constraints, and outputs of certification activities.

XI. Statement of Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 7105 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Statement of Constitutional Authority

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl. 1 of the Constitution of the United States.

XVII. 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 italics, and existing law in which no change is proposed is shown in roman):

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

SEC. 15.

(a) SMALL BUSINESS PROCUREMENTS.—

(1) IN GENERAL.—For purposes of this Act, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

(A) maintaining or mobilizing the full productive capacity of the United States;

(B) war or national defense programs; or

(C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) INDUSTRY CATEGORY DEFINED.—

(A) IN GENERAL.—In this subsection, the term "industry category" means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

(i) due to special capital equipment needs;

(ii) due to special labor requirements;

(iii) due to special geographic requirements, except as provided in subparagraph (B);

(iv) due to unique Federal buying patterns or requirements; or

(v) to recognize a new industry.

(B) EXCEPTION FOR GEOGRAPHIC REQUIREMENTS.—The Administrator may not further segment an industry category based on geographic requirements unless—

(i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;

(ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and

(iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

(3) DETERMINATIONS WITH RESPECT TO AWARDS OR CONTRACTS.—Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) INCREASING PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—

(A) DESCRIPTION OF COVERED PROPOSED PROCUREMENTS.—The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

(i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;

(ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or

(iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) NOTICE TO PROCUREMENT CENTER REPRESENTATIVES.—With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (l)) along with a statement explaining—

(i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;

(iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;

(iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or

(v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) ALTERNATIVES TO INCREASE PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods for increasing prime contracting opportunities for small business concerns.

(D) FAILURE TO AGREE ON AN ALTERNATIVE PROCUREMENT METHOD.—If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) CONTRACTS FOR SALE OF GOVERNMENT PROPERTY.—With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) SALE OF ELECTRICAL POWER OR OTHER PROPERTY.—Nothing in this subsection shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Federal Government.

(7) COSTS EXCEEDING FAIR MARKET PRICE.—A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.

(b) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694(b)), the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c)(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46).

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

(C) The term "handicapped individual" has the same meaning given such term in section 3(f).

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 2 of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 47).

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provison of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment

were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING.—

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—

(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) MARKET RESEARCH.—

(A) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) FACTORS.—For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

(i) Cost savings.

(ii) Quality improvements.

(iii) Reduction in acquisition cycle times.

(iv) Better terms and conditions.

(v) Any other benefits.

(C) REDUCTION OF COSTS NOT DETERMINATIVE.—The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include the following information:

(A) The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.

(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

(C) An assessment of—

(i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

(ii) the specific actions designed to maximize participation of small business concerns as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4) CONTRACT TEAMING.—

(A) IN GENERAL.—In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors or a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) EVALUATION OF OFFERS.—The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

(i) TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(C) STATUS AS A SMALL BUSINESS CONCERN.—Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern for any other purpose.

(5) PAST PERFORMANCE RATINGS OF JOINT VENTURES FOR SMALL BUSINESS CONCERNS.—With respect to evaluating an offer for a prime contract made by a small business concern that previously participated in a joint venture with another business concern (whether or not such other business concern was a small business concern), the Administrator shall establish regulations—

(A) allowing the small business concern to elect to use the past performance of the joint venture if the small business concern has no relevant past performance of its own;

(B) requiring the small business concern, when making an election under subparagraph (A)—

(i) to identify to the contracting officer the joint venture of which the small business concern was a member; and

(ii) to inform the contracting officer what duties and responsibilities the small business concern carried out as part of the joint venture; and

(C) requiring a contracting officer, if the small business concern makes an election under subparagraph (A), to consider the past performance of the joint venture when evaluating the past performance of the small business concern, giving due consideration to the information provided under subparagraph (B)(ii).

(f) CONTRACTING PREFERENCE FOR SMALL BUSINESS CONCERNS IN A MAJOR DISASTER AREA.—

(1) DEFINITION.—In this subsection, the term "disaster area" means the area for which the President has declared a major disaster, during the period of the declaration.

(2) CONTRACTING PREFERENCE.—An agency shall provide a contracting preference for a small business concern located in a disaster area if the small business concern will perform the work required under the contract in the disaster area.

(3) CREDIT FOR MEETING CONTRACTING GOALS.—If an agency awards a contract to a small business concern under the circumstances described in paragraph (2), the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A).

(g)

(1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—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:

(i) The Governmentwide 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. In meeting this goal, the Government shall ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less

than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) 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 subcontract awards for each fiscal year.

(iv) 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 subcontract awards for each fiscal year.

(v) 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 subcontract awards for each fiscal year.

(B) ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—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 Small Business 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 Governmentwide 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. Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.

(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) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, 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 and subcontracts 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.

(E) The head of each Federal agency, in attempting to attain expanded participation under 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 goals established under subparagraph (A).

(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.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses 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, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(4) EXCLUSION OF SELF-CERTIFIED WOSBS FROM GOALS.—Only small business concerns owned and controlled by women that have been certified under section 8(m)(2)(E) shall be included in calculating the goals established—

(A) under paragraph (1)(A)(v); and

(B) by the head of a Federal agency for small business concerns owned and controlled by women under paragraph (2).

(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) with respect to such fiscal year;

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

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any 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 Web site, 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) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(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;

(IV) through unrestricted competition;

(V) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VI) that were awarded using a procurement method that restricted competition to 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, small business concerns owned and controlled by women, or a subset of any such concerns;

(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;

(V) through unrestricted competition;

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by service-disabled veterans for purposes of the initial contract; and

(VII) that were awarded using a procurement method that restricted competition to qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(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;

(VI) through unrestricted competition where a price evaluation preference was not used;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be qualified HUBZone small business concerns for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(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;

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

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by socially and economically disadvantaged individuals for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by women, or a subset of any such concerns;

(v) small business concerns owned by an Indian tribe (as such term is defined in section 8(a)(13)) other than 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;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Indian tribe other than an Alaska Native Corporation for purposes of the initial contract;

(vi) small business concerns owned by a Native Hawaiian Organization—

(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) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by a Native Ha-

waiian Organization for purposes of the initial contract;

(vii) 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;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Alaska Native Corporation for purposes of the initial contract; and

(viii) 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;

(V) through sole source contracts awarded using the authority under subsection 8(m)(7);

(VI) through sole source contracts awarded using the authority under section 8(m)(8);

(VII) by industry for contracts described in subclause (III), (IV), (V), or (VI);

(VIII) through unrestricted competition;

(IX) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by women for purposes of the initial contract; and

(X) that were awarded using a procurement method that restricted competition to 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, or a subset of any such concerns; and

(F) for the Federal Government, 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, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), or otherwise available as provided in paragraph (3).

(3) PROCUREMENT DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—

(i) IN GENERAL.—To assist in the implementation of this section, the Administrator shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(ii) GSA REPORT.—On the date that the Administrator makes available the report required under paragraph (2), the Administrator of the General Services Administration shall submit to the President and Congress, and shall make available on a public website, a report in the same form and manner, and including the same information, as the report required under paragraph (2). The report shall include all procurements made for the period covered by the report and may not exclude any contract awarded.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administrator, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(4) BEST IN CLASS SMALL BUSINESS PARTICIPATION REPORTING.—

(A) ADDENDUM.—In addition to the requirements under paragraph (2) and for each best in class designation, the Administrator shall include in the report required by such paragraph—

(i) the total amount of spending Governmentwide in such designation; and

(ii) the number of small business concerns awarded contracts and the dollar amount of such contracts awarded within each such designation to each of the following—

(I) qualified HUBZone small business concerns;

(II) small business concerns owned and controlled by women;

(III) small business concerns owned and controlled by service-disabled veterans; and

(IV) small business concerns owned and controlled by socially and economically disadvantaged individuals.

(B) BEST IN CLASS DEFINED.—The term "best in class" has the meaning given such term by the Director of the Office of Management and Budget.

(C) EFFECTIVE DATE.—The Administrator shall report on the information described by subparagraph (A) beginning

on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.

(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j)(1) Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 8 of this Act, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 8, 15, 31, 36, or 44 of this Act. Such officer or employee—

(1) shall be known as the "Director of Small and Disadvantaged Business Utilization" for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5, United States Code), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 44(a) of this Act) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS–15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary's designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 8, 15, 31, 36, and 44 of this Act which relate to such agency;

(5) shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31, United States Code, or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation;

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8, 15, 31, 36, and 44 of this Act;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8, 15, 31, 36, and 44 of this Act,

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) or section 8, 15, 31, or 36 of this Act, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on

acquisition strategies, market research, and justifications related to section 44 of this Act;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this Act, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection;

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year;

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year; and

(D) any failure of the agency to comply with section 8, 15, 31, or 36;

(17) shall, when notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(A) submit the notice of the small business concern to the contracting officer and, if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition;

(B) inform the advocate for competition of such agency (as established under section 1705 of title 41, United States Code, or section 3249 of title 10, United States Code) of such notice; and

(C) ensure that the small business concern is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if such resources and processes are provided by such agency, the Administration, the Comptroller General, or a procurement technical assistance program established under chapter 388 of title 10, United States Code;

(18) shall review summary data provided by purchase card issuers of purchases made by the agency greater than the micro-purchase threshold (as defined under section 1902 of title 41, United Stated Code) and less than the simplified acquisition threshold to ensure that the purchases have been made in compliance with the provisions of this Act and have been properly recorded in the Federal Procurement Data Sys-

tem, if the method of payment is a purchase card issued by the Department of Defense pursuant to section 4754 of title 10, United States Code, or by the head of an executive agency pursuant to section 1909 of title 41, United States Code;

(19) shall provide assistance to a small business concern awarded a contract or subcontract under this Act or under title 10 or title 41, United States Code, in finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract;

(20) shall review all subcontracting plans required by paragraph (4) or (5) of section 8(d) to ensure that the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract to which the plan applies;

(21) shall consult with the appropriate personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program under section 9 with researching applicable solicitations for the award of a Federal contract (particularly with the Federal agency that has a funding agreement, as defined under section 9, with the concern) to market the research developed by such concern under such SBIR or STTR program.

This subsection shall not apply to the Administration.

(l) PROCUREMENT CENTER REPRESENTATIVES.—

(1) ASSIGNMENT AND ROLE.—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) ACTIVITIES.—A procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this Act;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified;

(I) assist small business concerns with finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract;

(J) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in a SBIR or STTR program under section 9 with Phase III;

(K) carry out any other responsibility assigned by the Administrator.

(3) APPEALS.—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

(5) POSITION REQUIREMENTS.—

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii) have the certification described in subparagraph (C).

(B) COMPENSATION.—The Administrator shall establish personnel positions for procurement center representatives assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(C) CERTIFICATION REQUIREMENTS.—

(i) IN GENERAL.—Consistent with the requirements of clause (ii), a procurement center representative

shall have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(ii) DELAY OF CERTIFICATION REQUIREMENTS.—

(I) TIMING.—The certification described in clause (i) is not required for any person serving as a procurement center representative until the date that is one calendar year after the date such person is appointed as a procurement center representative.

(II) APPLICATION.—The requirements of subclause (I) shall—

(aa) be included in any initial job posting for the position of a procurement center representative; and

(bb) apply to any person appointed as a procurement center representative after January 3, 2013.

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) TRAINING.—

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(9) SCOPE OF REVIEW.—The Administrator—

(A) may not limit the scope of review by the procurement center representative for any solicitation of a contract or task order without regard to whether the contract or task order or part of the contract or task order is set aside for small business concerns, whether 1 or more contracts or task order awards are reserved for small business concerns under a multiple award contract, or whether or not the solicitation would result in a bundled or consolidated contract (as defined in subsection (s)) or a bundled or consolidated task order; and

(B) shall, unless the contracting agency requests a review, limit the scope of review by the procurement center representative for any solicitation of a contract or task order if such solicitation is awarded by or for the Department of Defense and—

(i) is conducted pursuant to section 22 of the Arms Export Control Act (22 U.S.C. 2762);

(ii) is a humanitarian operation as defined in section 401(e) of title 10, United States Code;

(iii) is for a contingency operation, as defined in section 101(a)(13) of title 10, United States Code;

(iv) is to be awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or

(v) both the place of award and the place of performance are outside of the United States and its territories.

(m) ADDITIONAL DUTIES OF PROCUREMENT CENTER REPRESENTATIVES.—All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section and section 8(a).

(n) For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(p) ACCESS TO DATA.—

(1) BUNDLED OR CONSOLIDATED CONTRACT DEFINED.—In this subsection, the term "bundled or consolidated contract" has the meaning given in subsection (s).

(2) DATABASE.—Not later than 180 days after the date of the enactment of this subsection, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(A) each bundled contract awarded by a Federal agency; and

(B) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) ANALYSIS.—For each bundled contract that is to be recompeted as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) ANNUAL REPORT ON BUNDLED OR CONSOLIDATED CONTRACTS.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administration shall transmit a report on bundled or consolidated contracts to the Committees on Small Business of the House of Representatives and the Senate.

(B) CONTENTS.—Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled or consolidated contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled or consolidated contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were included in bundled or consolidated contracts; and

(II) with respect to each bundled or consolidated contract, data or information on—

(aa) the justification for the bundling of contract requirements or the consolidation of contract requirements (as applicable);

(bb) the cost savings realized by the bundling of contract requirements or the consolidation of contract requirements (as applicable) over the life of the contract;

(cc) the extent to which maintaining contract requirements in a bundled or consolidated contract is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements or the consolidation of contract requirements (as applicable) complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar

value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements or the consolidation of contract requirements (as applicable) on small business concerns unable to compete as prime contractors for the contract and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide to the Administrator data and information described in paragraphs (2) and (4).

(q) REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—

(1) TEAMING AND JOINT VENTURE REQUIREMENTS.—

(A) IN GENERAL.—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(B) TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(C) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation

of teaming and joint ventures under paragraph (1); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) REPORTING.—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) MULTIPLE AWARD CONTRACTS.—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 3406(c) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(s) DATA QUALITY IMPROVEMENT PLAN.—

(1) IN GENERAL.—Not later than October 1, 2015, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundled or consolidated con-

tracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41, United States Code).

(2) PLAN REQUIREMENTS.—The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Administrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4);

(B) recommend changes to policies and procedures, including training procedures of relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;

(C) recommend requirements for periodic and statistically valid data verification and validation; and

(D) recommend clear data verification responsibilities.

(3) PLAN SUBMISSION.—The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4) IMPLEMENTATION.—Not later than October 1, 2016, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

(5) CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

(6) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.—The terms "Chief Acquisition Officer" and "senior procurement executive" have the meanings given such terms in section 44(a) of this Act.

(B) BUNDLED OR CONSOLIDATED CONTRACT.—The term "bundled or consolidated contract" means a bundled contract (as defined in section 3(o)) or a contract resulting from the consolidation of contracting requirements (as defined in section 44(a)(2)).

(t) GAO REPORT ON SMALL BUSINESS ADMINISTRATION PROGRAMS IN PUERTO RICO.—Not later than one year after the date of enactment of this subsection, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the application and utilization of contracting activities of the Administration (including contracting activities relating to HUBZone small business concerns) in Puerto Rico. The report shall also identify any provisions of Fed-

eral law that may create an obstacle to the efficient implementation of such contracting activities.

(u) POST-AWARD COMPLIANCE RESOURCES.—The Administrator shall provide to small business development centers and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 388 of title 10, United States Code, and shall make available on the website of the Administration, a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract.

(v) REGULATORY CHANGES AND TRAINING MATERIALS.—Not less than annually, the Administrator shall provide to the Defense Acquisition University (established under section 1746 of title 10, United States Code), the Federal Acquisition Institute (established under section 1201 of title 41, United States Code), the individual responsible for mandatory training and education of the acquisition workforce of each agency (described under section 1703(f)(1)(C) of title 41, United States Code), small business development centers, and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 388 of title 10, United States Code—

(1) a list of all changes made in the prior year to regulations promulgated—

(A) by the Administrator that affect Federal acquisition; and

(B) by the Federal Acquisition Council that implement amendments to this Act; and

(2) any materials the Administrator has developed that explain, train, or assist Federal agencies or departments or small business concerns with compliance with the regulations described in paragraph (1).

(w) SOLICITATION NOTICE REGARDING ADMINISTRATION OF CHANGE ORDERS FOR CONSTRUCTION.—

(1) IN GENERAL.—With respect to any solicitation for the award of a contract for construction anticipated to be awarded to a small business concern, the agency administering such contract shall provide a notice along with the solicitation to prospective bidders and offerors that includes—

(A) information about the agency's policies or practices in complying with the requirements of the Federal Acquisition Regulation relating to the timely definitization of requests for an equitable adjustment; and

(B) information about the agency's past performance in definitizing requests for equitable adjustments in accordance with paragraph (2).

(2) REQUIREMENTS FOR AGENCIES.—An agency shall provide the past performance information described under paragraph (1)(B) as follows:

(A) For the 3-year period preceding the issuance of the notice, to the extent such information is available.

(B) With respect to an agency that, on the date of the enactment of this subsection, has not compiled the information described under paragraph (1)(B)—

(i) beginning 1 year after the date of the enactment of this subsection, for the 1-year period preceding the issuance of the notice;

(ii) beginning 2 years after the date of the enactment of this subsection, for the 2-year period preceding the issuance of the notice; and

(iii) beginning 3 years after the date of the enactment of this subsection and each year thereafter, for the 3-year period preceding the issuance of the notice.

(3) FORMAT OF PAST PERFORMANCE INFORMATION.—In the notice required under paragraph (1), the agency shall ensure that the past performance information described under paragraph (1)(B) is set forth separately for each definitization action that was completed during the following periods:

(A) Not more than 30 days after receipt of a request for an equitable adjustment.

(B) Not more than 60 days after receipt of a request for an equitable adjustment.

(C) Not more than 90 days after receipt of a request for an equitable adjustment.

(D) Not more than 180 days after receipt of a request for an equitable adjustment.

(E) Not more than 365 days after receipt of a request for an equitable adjustment.

(F) More than 365 days after receipt of a request for an equitable adjustment.

(G) After the completion of the performance of the contract through a contract modification addressing all undefinitized requests for an equitable adjustment received during the term of the contract.

(x) SMALL BUSINESS CREDIT FOR PUERTO RICO BUSINESSES AND COVERED TERRITORY BUSINESSES.—

(1) CREDIT FOR MEETING CONTRACTING GOALS.—If an agency awards a prime contract to Puerto Rico business or a covered territory business, or a prime contractor awards a subcontract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business, during the period beginning on the date of enactment of this subsection and ending on the date that is 4 years after such date of enactment, the value of the contract or subcontract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A) during such period.

(2) REPORT.—Along with the report required under subsection (h)(1), the head of each Federal agency shall submit to the Administrator, and make publicly available on the scorecard (as defined in subsection (y)), an analysis of the number and dollar amount of prime contracts awarded pursuant to paragraph (1) for each fiscal year of the period described in such paragraph.

(y) SCORECARD PROGRAM FOR EVALUATING FEDERAL AGENCY COMPLIANCE WITH SMALL BUSINESS CONTRACTING GOALS.—

(1) USE OF SCORECARD.—The Administrator shall use a scorecard to annually evaluate whether each Federal agency is creating the maximum practicable opportunities for the award of prime contracts and subcontracts 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, by assigning a score to each Federal agency for the previous fiscal year.

(2) CONTENTS OF SCORECARD.—The scorecard shall include, for each Federal agency and Governmentwide, the following information:

(A) A determination of whether a Federal agency or the Federal Government, as applicable, met each of the prime contract goals established pursuant to subsection (g)(1)(B) with respect 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) A determination of whether a Federal agency or the Federal Government, as applicable, met each of the subcontract goals established pursuant to such section with respect 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.

(C) The number 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 awarded prime contracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded contracts during the prior fiscal year, if available.

(D) The number 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 awarded subcontracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded subcontracts during the prior fiscal year, if available.

(E) Any other factors that the Administrator deems important to achieve the maximum practicable utilization 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.

(3) WEIGHTED FACTORS.—In using the scorecard to evaluate and assign a score to a Federal agency, the Administrator shall base—

(A) fifty percent of the score on the dollar value of prime contracts described in paragraph (2)(A); and

(B) fifty percent of the score on the information provided in subparagraphs (B) through (E) of paragraph (2), weighted in a manner determined by the Administrator to encourage the maximum practicable opportunity for the award of prime contracts and subcontracts 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.

(4) ADDITIONAL REQUIREMENTS FOR SCORECARDS.—The scorecard shall include, for each Federal agency and Government-wide, the following information with respect to prime contracts:

(A) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by women through sole source contracts and competitions restricted to small business concerns owned and controlled by women under section 8(m).

(B) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by qualified HUBZone small business concerns through sole source contracts and competitions restricted to qualified HUBZone small business concerns under section 31(c)(2).

(C) The number (expressed as a percentage) and total dollar amount of awards made to small business concerns owned and controlled by service-disabled veterans through sole source contracts and competitions restricted to small business concerns owned and controlled by service-disabled veterans under section 36.

(D) The number (expressed as a percentage) and total dollar amount of awards made to socially and economically disadvantaged small business concerns under section 8(a) through sole source contracts and competitions restricted to socially and economically disadvantaged small business concerns, disaggregated by awards made to such concerns that are owned and controlled by individuals and awards made to such concerns that are owned and controlled by an entity.

(5) PUBLICATION.—The scorecard used by the Administrator under this subsection shall be submitted to the President and Congress along with the report submitted under subsection (h)(2).

(6) SCORECARD DEFINED.—In this subsection, the term "scorecard" means any summary using a rating system to evaluate the efforts of a Federal agency to meet goals established under subsection (g)(1)(B) that—

(A) includes the measures described in paragraph (2); and

(B) assigns a score to each Federal agency evaluated.

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XVIII. MINORITY VIEWS

The Small Business Administration's (SBA) Women-Owned Small Business (WOSB) Contracting Program is designed to help level the playing field for women-owned small businesses and economically disadvantaged women-owned small businesses (EDWOSBs) in the federal marketplace. The federal government attempts to expand contracting opportunities for WOSBs in two main ways: (a) setting an overall goal of sending 5% of federal contracting dollars to women-owned firms and (b) using streamlined authorities to make it easier for federal agencies to contract with women-owned firms. These authorities allow contracting officers to set-aside a contract for exclusively WOSBs competition and to sole source contracts to a WOSB firm, when certain conditions are met.

The federal government topline goal of 5% for WOSBs has only been met twice and federal agencies routinely miss their individual WOSB goals. Historically, women-owned small businesses have not been provided with the contracting opportunities that should accompany their level of participation in the federal market.

SBA administers contracting programs for small businesses in four categories: (1) the 8(a) Business Development program; (2) Women-Owned Small Business program (WOSB); (3) Historically Underutilized Business Zone small business program (HUBZone); and (4) Service-Disabled Veteran-Owned Small Business program (SDVOSB). The FY24 National Defense Authorization Act eliminated self-certification for the SDVOSB program. As a result, the three other contracting programs will now require participants to be certified by the SBA.

Stakeholders have pointed to the lack of SBA certification and other WOSB unique requirements as limitations on contracting officers that prohibit great use of the program's authorities. For example, the Government Accountability Office (GAO) surveyed WOSB stakeholders and some mentioned that having to review additional documentation on their own, since SBA didn't certify the firms, was burdensome and limited use of the program.[1]

The goal of requiring an SBA certification is to protect the integrity of the program but also to incentivize contracting officers to use the authorities designed to streamline contracting with WOSB firms. Right now, these authorities are underutilized.

According to CRS's last analysis in fiscal year 2021, the percentage of contracts awarded through a set-aside or a sole source varies significantly by program. For 17% of contract spending awarded to HUBZone companies, contracting officers use the set-aside or sole-source authorities, while well over half—about 58%—of 8(a) contracts can be awarded only to 8(a) certified firms. The SDVOSB

[1] Government Accountability Office. "Women-Owned Small Business Program: Actions Needed to Address Continued Oversight Issues" (GAO–19–563) May 16, 2019: https://www.gao.gov/products/gao-19-563.

program has 44% of its dollars reserved exclusively for program participants. Of the contract spending now awarded to women-owned small businesses, only 5% is moved through the contracting authorities.[2] This bill is intended to strengthen the WOSB program while also encouraging greater use of the contracting authorities for certified WOSB firms.

To date, both the establishment and administration of the WOSB program, as well as federal agencies' efforts to meet the WOSB goals have been significant challenges. Requiring all WOSB to be certified by the SBA or a third-party certifier will take time and resources for SBA to implement. The legislation builds in additional time for SBA to implement these requirements, and specifically includes processes to ensure that current and future WOSB firms are not penalized if SBA faces delays. The committee intends for SBA to ensure that WOSB firms who have applied for certification with the SBA or a third-party certifier by the deadline are able to continue to receive contracts that are counted toward an agency's small business procurement goals until a decision on their certification is made by the SBA.

Finally, the WOSB program is unique in its use of third-party certifiers. The third-party certifiers are now required to tell prospective applicates that the SBA certification is an option and does not charge a fee. The committee believes that existing and new processes laid out in the bill will ensure that no WOSB is required to pay for a certification.

Sincerely,

NYDIA M. VELÁZQUEZ,
Ranking Member.

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[2] Congressional Research Service. "An Overview of Small Business Contracting" (R45576), Updated July 29, 2022: https://crsreports.congress.gov/product/pdf/R/R45576.