To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. JOHNSON of Georgia (for himself, Mr. DOGGETT, Mr. GENE GREEN of Texas, Ms. CORRINE BROWN of Florida, Mr. CARDOZA, Ms. BORDALLO, Mr. PILNER, and Ms. ROS-LEHTINEN) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled, 

SECTION 1. SHORT TITLE. 

This Act may be cited as the “Fairness and Trans-
parency in Contracting Act of 2009”.

SEC. 2. DEFINITIONS.

In this Act—
(1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term “parent company”, relating to a business concern, means a person other than an individual that owns not less than 51 percent of that business concern;

(3) the terms “small business concern”, “small business concern owned and controlled by veterans”, “small business concern owned and controlled by service-disabled veterans”, and “small business concern owned and controlled by women” have the meanings given those terms in section 3 of the Small Business Act (15 U.S.C. 632), as amended by this Act; and

(4) the term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given that term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

SEC. 3. PURPOSE.

The purpose of this Act is to modify the definitions relating to whether a business concern qualifies as a small business concern, to establish additional requirements that ensure that no publically traded business concern, sub-
sidiary of a publically traded business concern, foreign-
owned business concern, or subsidiary of a foreign-owned
business concern is considered a small business concern
for the purpose of Federal Government contracting and
subcontracting, including for procurement goals.

SEC. 4. DEFINITION OF SMALL BUSINESS CONCERN AND
STATUS REVIEW.

Section 3(a) of the Small Business Act (15 U.S.C.
632(a)) is amended by adding at the end the following:

“(5) INDEPENDENTLY OWNED AND OPERATED.—

“(A) IN GENERAL.—In this subsection, the
term ‘independently owned and operated’ does not
include a business concern—

“(i) that is—

“(I) an issuer of a class of securities
registered or that is required to be reg-
istered pursuant to section 12 of the Secu-
78l) or that is required to file reports pur-
suant to section 15(d) of that Act (15
U.S.C. 78o(d)); or

“(II) owned by an issuer of a class of
securities registered or that is required to
be registered pursuant to section 12 of the
Securities Exchange Act of 1934 (15
U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78o(d)); or

“(ii) more than 50 percent of which is owned, directly or indirectly, by one or more individuals that are not United States citizens.

“(B) ENTITIES.—In determining ownership of a business concern, any interest in the business concern that is owned by a person that is not an individual (including a corporation, partnership, estate or trust) shall be considered owned proportionately by or for the individuals that own that person.”

SEC. 5. NOTIFICATION.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall notify the head of each Federal department or agency regarding this Act and the amendments made by this Act.

(b) TO CONTRACTORS.—Not later than 6 months after receiving notice under subsection (a), the head of a Federal department or agency shall notify any contractor of that department or agency regarding this Act and the amendments made by this Act.

SEC. 6. REPORTING.

(a) IN GENERAL.—Not later than 6 months after the end of each fiscal year, the Administrator shall publish
a report regarding prime contracts with the Federal Government awarded to business concerns that were identified as small business concerns for the purposes of achieving the small business contracting goals of the Federal Government during the previous fiscal year.

(b) CONTENTS.—

(1) IN GENERAL.—Each report under subsection (a) shall, for the fiscal year before the year in which that report is published, include—

(A) the name of each small business concern, small business concern owned and controlled by socially and economically disadvantaged individuals, small business concern owned and controlled by women, small business concern owned and controlled by veterans, and small business concern owned and controlled by service-disabled veterans that was awarded a prime contract with the Federal Government; and

(B) for each small business concern described in subparagraph (A), the total dollar amount of prime contracts with the Federal Government awarded to that small business concern in descending order.
(2) PARENT COMPANIES.—If a small business concern described in paragraph (1)(A) has a parent company, the Administrator shall report information relating to any prime contract with the federal government of that small business concern and the name of that parent company.

(c) AVAILABILITY.—The Administrator shall make each report under subsection (a) available on the website of the Administration in a manner that is easily accessible by members of the public.

SEC. 7. LIST OF CONTRACTORS.

(a) IN GENERAL.—Each Federal department and agency shall publish on the website of that department or agency a list of each business concern that received a contract award because that business concern was identified as a small business concern.

(b) LIST CONTENTS.—A list published under subsection (a) shall—

(1) list business concerns in the order of the total amount in dollars of contracts between the Federal Government and that business concern, beginning with the largest total value;

(2) include the total amount in dollars of contracts between the Federal Government and each business concern on such list; and
(3) include the name of any parent company of
a business concern on such list.

SEC. 8. CONTRACTING DATABASES.

The Administrator shall, by regulation, establish pro-
cedures to ensure that the Central Contractor Registration
database and any successor database provide an adequate
warning regarding criminal penalties established under
section 16(d) of the Small Business Act (15 U.S.C.
645(d)) for misrepresenting the status of a business con-
cern or person in order to obtain certain contracts with
the Federal Government.

SEC. 9. ENFORCEMENT.

(a) COMPLAINTS.—

(1) IN GENERAL.—Any person may file a com-
plaint with the Administrator and the head of the
affected department or agency about the classifica-
tion of a business concern as a small business con-
cern and the Administrator and the head of the af-
fected department or agency shall resolve any com-
plaint filed under this paragraph in a timely man-
ner.

(2) REPORTS.—The Administrator shall annu-
ally submit to Congress a report describing any com-
plaints described in paragraph (1) that were filed
during the relevant year and the resolution of any such complaint.

(b) DEBARMENT.—The head of each Federal department or agency shall issue or amend the contracting rules and regulations for that department or agency to ensure that a business concern shall be debarred from receiving a Federal contract for a period of not less than 5 years if that business concern—

(1) fraudulently represents that it is a small business concern as part of a bid for a small business contract with that department or agency; or

(2) violates this Act or an amendment made by this Act.