

112TH CONGRESS
2D SESSION

H. R. 4206

To amend the Small Business Act to provide for increased penalties for contracting fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2012

Mr. COFFMAN of Colorado (for himself and Mr. GRAVES of Missouri) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on the Judiciary, 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 provide for increased penalties for contracting fraud, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Contracting Oversight
5 for Small Business Jobs Act of 2012”.

1 **SEC. 2. INCREASED PENALTIES FOR FRAUD.**

2 (a) IN GENERAL.—Chapter 47 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 1041. Misrepresentation of status as a small busi-
6 ness concern**

7 “(a) IN GENERAL.—Whoever knowingly—

8 “(1) falsifies, conceals, or covers up by any
9 trick, scheme, or device a material fact;

10 “(2) makes any materially false, fictitious, or
11 fraudulent statement or representation; or

12 “(3) makes or uses any false writing or docu-
13 ment, including electronically, knowing the same to
14 contain any materially false, fictitious, or fraudulent
15 statement or entry;

16 concerning status as a small business concern or compli-
17 ance with the requirements of the Small Business Act in
18 an effort to obtain, retain, or complete a federal govern-
19 ment contract shall be fined \$1,000,000 or in a sum equal
20 to twice the amount or value of goods or services under
21 the contract or order, whichever is greater, imprisoned not
22 more than 5 years, or both.”.

23 (b) TECHNICAL AMENDMENT.—The table of sections
24 for such chapter is amended by inserting after the item
25 relating to the following section:

“1041. Misrepresentation of status as a small business concern.”.

1 **SEC. 3. SAFE HARBOR FOR GOOD FAITH COMPLIANCE EF-**
2 **FORTS.**

3 (a) **SMALL BUSINESS FRAUD.**—Section 16(d) of the
4 Small Business Act (15 U.S.C. 16(d)) is amended by in-
5 serting after paragraph (2) the following:

6 “(3) This subsection shall not apply to any con-
7 duct in violation of subsection (a) if the defendant
8 acted in reliance on a written advisory opinion from
9 a licensed attorney who is not an employee of the de-
10 fendant.”.

11 (b) **MISREPRESENTATION OF STATUS.**—Section 1041
12 of title 18, United States Code, as added by section 2 of
13 this Act, is amended by inserting after subsection (a) the
14 following:

15 “(b) **EXCEPTION.**—This section shall not apply to
16 any conduct in violation of paragraph (2) or (3) of sub-
17 section (a) if the defendant acted in reliance on a written
18 advisory opinion from a licensed attorney who is not an
19 employee of the defendant.”.

20 (c) **REGULATIONS.**—Not later than 270 days after
21 the date of enactment of this Act, the Administrator of
22 the Small Business Administration shall issue rules defin-
23 ing what constitutes an adequate advisory opinion for pur-
24 poses of section 16(d)(3) of the Small Business Act.

25 (d) **SMALL BUSINESS COMPLIANCE GUIDE.**—Not
26 later than 270 days after the date of enactment of this

1 Act, the Administrator of the Small Business Administra-
2 tion shall issue (pursuant to section 212 of the Small
3 Business Regulatory Enforcement Fairness Act of 1996)
4 a compliance guide to assist business concerns in accu-
5 rately determining their status as a small business con-
6 cern.

7 **SEC. 4. OFFICE OF HEARINGS AND APPEALS.**

8 (a) CHIEF HEARING OFFICER.—Section 4(b)(1) of
9 the Small Business Act is amended by adding at the end
10 the following: “One shall be designated at the time of his
11 or her appointment as the Chief Hearing Officer, who
12 shall head and administer the Office of Hearings and Ap-
13 peals within the Administration.”.

14 (b) OFFICE OF HEARINGS AND APPEALS ESTAB-
15 LISHED IN ADMINISTRATION.—Section 5 of the Small
16 Business Act (15 U.S.C. 634) is amended by adding at
17 the end the following:

18 “(i) OFFICE OF HEARINGS AND APPEALS.—

19 “(1) IN GENERAL.—There is established in the
20 Administration an Office of Hearings and Appeals—

21 “(A) to impartially decide such matters,
22 where Congress designates that a hearing on
23 the record is required or which the Adminis-
24 trator designates by regulation or otherwise;
25 and

1 “(B) which shall contain the Administra-
2 tion’s Freedom of Information/Privacy Acts Of-
3 fice.

4 “(2) CHIEF HEARING OFFICER.—The Chief
5 Hearing Officer shall be a career member of the
6 Senior Executive Service and an attorney duly li-
7 censed by any State, commonwealth, territory, or the
8 District of Columbia.

9 “(A) DUTIES.—The Chief Hearing Officer
10 shall—

11 “(i) serve as the Chief Administrative
12 Law Judge; and

13 “(ii) be responsible for the operation
14 and management of the Office of Hearings
15 and Appeals, pursuant to the rules of prac-
16 tice established by the Administrator.

17 “(B) ALTERNATIVE DISPUTE RESOLU-
18 TION.—The Chief Hearing Officer may also as-
19 sign a matter for mediation or other means of
20 alternative dispute resolution.

21 “(3) ADMINISTRATIVE LAW JUDGES.—

22 “(A) IN GENERAL.—An administrative law
23 judge shall be an attorney duly licensed by any
24 State, commonwealth, territory, or the District
25 of Columbia.

1 “(B) CONDITIONS OF EMPLOYMENT.—(i)
2 An administrative law judge shall serve in the
3 excepted service as an employee of the Adminis-
4 tration under section 2103 of title 5, United
5 States Code, and under the supervision of the
6 Chief Hearing Officer.

7 “(ii) Administrative law judge positions
8 shall be classified at Senior Level, as such term
9 is defined in section 5376 of title 5, United
10 States Code.

11 “(iii) Compensation for administrative law
12 judge positions shall be set in accordance with
13 the pay rates of section 5376 of title 5, United
14 States Code.

15 “(C) TREATMENT OF CURRENT PER-
16 SONNEL.—An individual serving as a Judge in
17 the Office of Hearings and Appeals (as that po-
18 sition and office are designated in section
19 134.101 of title 13, Code of Federal Regula-
20 tions (as in effect on January 1, 2012)) on the
21 effective date of this subsection shall be consid-
22 ered as qualified to be and redesignated as ad-
23 ministrative law judges.

24 “(D) POWERS.—An administrative law
25 judge shall have the authority to conduct hear-

1 ings in accordance with sections 554, 556, and
2 557 of title 5, United States Code.”.

3 **SEC. 5. REQUIREMENT FRAUDULENT BUSINESSES BE SUS-**
4 **PENDED OR DEBARRED.**

5 (a) IN GENERAL.—Section 16(d)(2) of the Small
6 Business Act (15 U.S.C. 645(d)(3)) is amended by strik-
7 ing “on the basis that such misrepresentation indicates a
8 lack of business integrity that seriously and directly af-
9 fects the present responsibility to perform any contract
10 awarded by the Federal Government or a subcontract
11 under such a contract” and inserting “if the misrepresen-
12 tation is established by a preponderance of the evidence
13 (in the case of debarment) or adequate evidence (in the
14 case of suspension)”.

15 (b) REVISION TO FAR.—Not later than 270 days
16 after the date of enactment of this Act, the Federal Acqui-
17 sition Regulation shall be revised to implement the amend-
18 ment made by this section.

19 (c) PUBLICATION OF PROCEDURES REGARDING SUS-
20 PENSION AND DEBARMENT.—Not later than 270 days
21 after the date of enactment of this Act, the Administrator
22 shall publish on the Administration’s Web site the stand-
23 ard operating procedures for suspension and debarment
24 in effect, and the name and contact information for the
25 individual designated by the Administrator as the senior

1 individual responsible for suspension and debarment pro-
2 ceedings.

3 (d) **REQUIRED REGULATIONS.**—Not later than 270
4 days after the date of enactment of this Act, the Adminis-
5 trator of the Small Business Administration shall issue
6 regulations defining the term “adequate evidence” for pur-
7 poses of section 16(d)(2) of the Small Business Act.

8 **SEC. 6. ANNUAL REPORT ON SUSPENSIONS AND**
9 **DEBARMENTS PROPOSED BY SMALL BUSI-**
10 **NESS ADMINISTRATION.**

11 (a) **REPORT REQUIREMENT.**—The Administrator of
12 the Small Business Administration shall submit each year
13 to the Committee on Small Business and Entrepreneur-
14 ship of the Senate, and the Committee on Small Business
15 of the House of Representatives a report on the suspen-
16 sion and debarment actions taken by the Administrator
17 during the year preceding the year of submission of the
18 report.

19 (b) **MATTERS COVERED.**—The report required by
20 subsection (a) shall include the following information for
21 the year covered by the report:

22 (1) **NUMBER.**—The number of contractors pro-
23 posed for suspension or debarment.

1 (2) SOURCE.—The office within a Federal
2 agency that originated each proposal for suspension
3 or debarment.

4 (3) REASONS.—The reason for each proposal
5 for suspension or debarment.

6 (4) RESULTS.—The result of each proposal for
7 suspension or debarment, and the reason for such
8 result.

9 (5) REFERRALS.—The number of suspensions
10 or debarments referred to the Inspector General of
11 the Small Business Administration or another agen-
12 cy, or to the Attorney General (for purposes of this
13 paragraph, the Administrator may redact identifying
14 information on names of companies or other infor-
15 mation in order to protect the integrity of any ongo-
16 ing criminal or civil investigation).

17 **SEC. 7. SENSE OF CONGRESS.**

18 It is the sense of Congress that the Administrator
19 of the Small Business Administration should present to
20 the Inspector General of the Administration or the Attor-
21 ney General any evidence of a violation or potential viola-
22 tion of section 1041, title 18, United States Code, or sec-
23 tion 16(d) of the Small Business Act, presented in a pro-

- 1 ceeding conducted by the Office of Hearings and Appeals
- 2 established in section 4 of this Act.

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