

112TH CONGRESS  
1ST SESSION

# S. 633

To prevent fraud in small business contracting, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 17, 2011

Ms. SNOWE (for herself, Ms. LANDRIEU, Mr. BROWN of Massachusetts, Mr. MERKLEY, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To prevent fraud in small business contracting, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “8(a) program” means the pro-  
9 gram under section 8(a) of the Small Business Act  
10 (15 U.S.C. 637(a));

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

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

9           (4) the term “recertification” means a deter-  
10          mination by the Administrator that a business con-  
11          cern that was previously determined to be a qualified  
12          HUBZone small business concern is a qualified  
13          HUBZone small business concern under section  
14          3(p)(5) of the Small Business Act (15 U.S.C.  
15          632(p)(5)).

16 **SEC. 3. FRAUD DETERRENCE AT THE SMALL BUSINESS AD-**  
17 **MINISTRATION.**

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

20           (1) in subsection (d)—

21           (A) in paragraph (1)—

22           (i) in the matter preceding subpara-  
23           graph (A), by striking “Whoever” and all  
24           that follows through “oneself or another”  
25           and inserting the following: “A person

1 shall be subject to the penalties and rem-  
2 edies described in paragraph (2) if the per-  
3 son misrepresents the status of any con-  
4 cern or person as a small business concern,  
5 a qualified HUBZone small business con-  
6 cern, a small business concern owned and  
7 controlled by socially and economically dis-  
8 advantaged individuals, a small business  
9 concern owned and controlled by women,  
10 or a small business concern owned and  
11 controlled by service-disabled veterans, in  
12 order to obtain for any person”;

13 (ii) by amending subparagraph (A) to  
14 read as follows:

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

18 (iii) by striking subparagraph (B);

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

22 (v) in subparagraph (C), as so redesi-  
23 gnated, by striking “, shall be” and all  
24 that follows and inserting a period;

25 (B) in paragraph (2)—

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

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

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

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

11 “(3)(A) In the case of a violation of paragraph  
12 (1)(A), (g), or (h), for purposes of a proceeding described  
13 in subparagraph (A) or (C) of paragraph (2), the amount  
14 of the loss to the Federal Government or the damages sus-  
15 tained by the Federal Government, as applicable, shall be  
16 an amount equal to the amount that the Federal Govern-  
17 ment paid to the person that received a contract, grant,  
18 or cooperative agreement described in paragraph (1)(A),  
19 (g), or (h), respectively.

20 “(B) In the case of a violation of subparagraph (B)  
21 or (C) of paragraph (1), for the purpose of a proceeding  
22 described in subparagraph (A) or (C) of paragraph (2),  
23 the amount of the loss to the Federal Government or the  
24 damages sustained by the Federal Government, as appli-  
25 cable, shall be an amount equal to the portion of any pay-

1 ment by the Federal Government under a prime contract  
2 that was used for a subcontract described in subparagraph  
3 (B) or (C) of paragraph (1), respectively.

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

9 (2) by striking subsection (e) and inserting the  
10 following:

11 “(e) Any representation of the status of any concern  
12 or person as a small business concern, a HUBZone small  
13 business concern, a small business concern owned and con-  
14 trolled by socially and economically disadvantaged individ-  
15 uals, a small business concern owned and controlled by  
16 women, or a small business concern owned and controlled  
17 by service-disabled veterans, in order to obtain any prime  
18 contract, subcontract, grant, or cooperative agreement de-  
19 scribed in subsection (d)(1) shall be made in writing or  
20 through the Online Representations and Certifications Ap-  
21 plication process required under section 4.1201 of the  
22 Federal Acquisition Regulation, or any successor there-  
23 to.”; and

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

1       “(g) A person shall be subject to the penalties and  
2 remedies described in subsection (d)(2) if the person mis-  
3 represents the status of any concern or person as a small  
4 business concern, a qualified HUBZone small business  
5 concern, a small business concern owned and controlled  
6 by socially and economically disadvantaged individuals, a  
7 small business concern owned and controlled by women,  
8 or a small business concern owned and controlled by serv-  
9 ice-disabled veterans—

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

12           “(2) in relation to a protest of a contract award  
13 or proposed contract award made under regulations  
14 issued by the Administration.

15       “(h)(1) A person that submits a request for payment  
16 on a contract or subcontract that is awarded under sub-  
17 section (a) or (m) of section 8, or section 9, 15, 31, or  
18 36, shall be deemed to have submitted a certification that  
19 the person complied with regulations issued by the Admin-  
20 istration governing the percentage of work that the person  
21 is required to perform on the contract or subcontract, un-  
22 less the person states, in writing, that the person did not  
23 comply with the regulations.

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

1           “(A) uses the services of a business other than  
2           the business awarded the contract or subcontract to  
3           perform a greater percentage of work under a con-  
4           tract than is permitted by regulations issued by the  
5           Administration; or

6           “(B) willfully participates in a scheme to cir-  
7           cumvent regulations issued by the Administration  
8           governing the percentage of work that a contractor  
9           is required to perform on a contract.”.

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

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

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

18                   “(B) a former member of the Armed  
19                   Forces who is retired, separated, or placed on  
20                   the temporary disability retired list for physical  
21                   disability under chapter 61 of title 10, United  
22                   States Code.”.

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

1 “(g) VETERAN STATUS.—

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

5 “(A) submit an annual certification indi-  
6 cating that the business concern is a small busi-  
7 ness concern owned and controlled by service-  
8 disabled veterans by means of the Online Rep-  
9 resentations and Certifications Application  
10 process required under section 4.1201 of the  
11 Federal Acquisition Regulation, or any suc-  
12 cessor thereto; and

13 “(B) register with—

14 “(i) the Central Contractor Registra-  
15 tion database maintained under subpart  
16 4.11 of the Federal Acquisition Regulation,  
17 or any successor thereto; and

18 “(ii) the VetBiz database of the De-  
19 partment of Veterans Affairs, or any suc-  
20 cessor thereto.

21 “(2) VERIFICATION OF STATUS.—

22 “(A) VETERANS AFFAIRS.—The Secretary  
23 of Veterans Affairs shall determine whether a  
24 business concern registered with the VetBiz  
25 database of the Department of Veterans Af-

1           fairs, or any successor thereto, as a small busi-  
2           ness concern owned and controlled by veterans  
3           or a small business concern owned and con-  
4           trolled by service-disabled veterans is owned  
5           and controlled by a veteran or a service-disabled  
6           veteran, as the case may be.

7           “(B) FEDERAL AGENCIES GENERALLY.—

8           The head of each Federal agency shall—

9           “(i) for a sole source contract award-  
10          ed to a small business concern owned and  
11          controlled by service-disabled veterans or a  
12          contract awarded with competition re-  
13          stricted to small business concerns owned  
14          and controlled by service-disabled veterans  
15          under section 36, determine whether a  
16          business concern submitting a proposal for  
17          the contract is a small business concern  
18          owned and controlled by service-disabled  
19          veterans; and

20          “(ii) use the VetBiz database of the  
21          Department of Veterans Affairs, or any  
22          successor thereto, in determining whether  
23          a business concern is a small business con-  
24          cern owned and controlled by service-dis-  
25          abled veterans.

1           “(3) DEBARMENT AND SUSPENSION.—If the  
2 Administrator determines that a business concern  
3 knowingly and willfully misrepresented that the busi-  
4 ness concern is a small business concern owned and  
5 controlled by service-disabled veterans, the Adminis-  
6 trator may debar or suspend the business concern  
7 from contracting with the United States.”.

8           (c) INTEGRATION OF DATABASES.—Not later than 1  
9 year after the date of enactment of this Act, the Adminis-  
10 trator for Federal Procurement Policy and the Secretary  
11 of Veterans Affairs shall ensure that data is shared on  
12 an ongoing basis between the VetBiz database of the De-  
13 partment of Veterans Affairs and the Central Contractor  
14 Registration database maintained under subpart 4.11 of  
15 the Federal Acquisition Regulation.

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

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

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

23           “(A) conduct an evaluation of the effectiveness  
24 of the program under this subsection, including an  
25 examination of—

1           “(i) the number and size of contracts ap-  
2           plied for, as compared to the number received  
3           by, small business concerns after successfully  
4           completing the program;

5           “(ii) the percentage of small business con-  
6           cerns that continue to operate during the 3-year  
7           period beginning on the date on which the small  
8           business concerns successfully complete the pro-  
9           gram;

10           “(iii) whether the business of small busi-  
11           ness concerns increases during the 3-year pe-  
12           riod beginning on the date on which the small  
13           business concerns successfully complete the pro-  
14           gram; and

15           “(iv) the number of training sessions of-  
16           fered under the program; and

17           “(B) submit to the Committee on Small Busi-  
18           ness and Entrepreneurship of the Senate and the  
19           Committee on Small Business of the House of Rep-  
20           resentatives a report regarding each evaluation  
21           under subparagraph (A).”.

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

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

1 (A) evaluate the feasibility of—

2 (i) using additional third-party data  
3 sources;

4 (ii) making unannounced visits of  
5 sites that are selected randomly or using  
6 risk-based criteria;

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

9 (iv) conducting financial and analyt-  
10 ical training for the business opportunity  
11 specialists of the Administration;

12 (B) evaluate the feasibility and advisability  
13 of amending regulations applicable the 8(a) pro-  
14 gram to require that calculations of the ad-  
15 justed net worth or total assets of an individual  
16 include assets held by the spouse of the indi-  
17 vidual; and

18 (C) develop a more consistent enforcement  
19 strategy that includes the suspension or debar-  
20 ment of contractors that knowingly make mis-  
21 representations in order to qualify for the 8(a)  
22 program; and

23 (2) not later than 1 year after the date on  
24 which the Comptroller General submits the report  
25 under section 8(a)(22)(B) of the Small Business

1 Act, as added by subsection (c), issue, in final form,  
2 proposed regulations of the Administration that—

3 (A) determine the economic disadvantage  
4 of a participant in the 8(a) program based on  
5 the income and asset levels of the participant at  
6 the time of application and annual recertifi-  
7 cation for the 8(a) program; and

8 (B) limit the ability of a small business  
9 concern to participate in the 8(a) program if an  
10 immediate family member of an owner of the  
11 small business concern is, or has been, a partici-  
12 pant in the 8(a) program, in the same indus-  
13 try.

14 **SEC. 6. HUBZONE IMPROVEMENTS.**

15 (a) PURPOSE.—The purpose of this section is to re-  
16 form and improve the HUBZone program of the Adminis-  
17 tration.

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

19 (1) ensure the HUBZone map is—

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

21 (B) revised as new data is made available  
22 to maintain the accuracy and currency of the  
23 HUBZone map;

24 (2) implement policies for ensuring that only  
25 HUBZone small business concerns determined to be

1 qualified under section 3(p)(5) of the Small Busi-  
2 ness Act (15 U.S.C. 632(p)(5)) are participating in  
3 the HUBZone program, including through the ap-  
4 propriate use of technology to control costs and  
5 maximize, among other benefits, uniformity, com-  
6 pleteness, simplicity, and efficiency;

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

18 (4) develop measures and implement plans to  
19 assess the effectiveness of the HUBZone program  
20 that—

21 (A) require the identification of a baseline  
22 point in time to allow the assessment of eco-  
23 nomic development under the HUBZone pro-  
24 gram, including creating additional jobs; and

25 (B) take into account—

- 1 (i) the economic characteristics of the  
2 HUBZone; and  
3 (ii) contracts being counted under  
4 multiple socioeconomic subcategories.

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

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

9 “(E) EMPLOYMENT PERCENTAGE DURING  
10 INTERIM PERIOD.—

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

21 “(ii) INTERIM PERIOD.—During the  
22 interim period, the Administrator may not  
23 determine that the HUBZone small busi-  
24 ness is not qualified under subparagraph  
25 (A) based on a failure to meet the applica-

1           ble employment percentage under subpara-  
2           graph (A)(i)(I), unless the HUBZone small  
3           business concern—

4                   “(I) has not attempted to main-  
5                   tain the applicable employment per-  
6                   centage under subparagraph (A)(i)(I);  
7                   or

8                   “(II) does not meet the applica-  
9                   ble employment percentage—

10                   “(aa) on the date on which  
11                   the HUBZone small business  
12                   concern submits a bid for a con-  
13                   tract under the HUBZone pro-  
14                   gram; or

15                   “(bb) on the date on which  
16                   the HUBZone small business  
17                   concern is awarded a contract  
18                   under the HUBZone program.”;  
19                   and

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

21                   “(8)    HUBZONE    PROGRAM.—The    term  
22           ‘HUBZone program’ means the program established  
23           under section 31.

1           “(9) HUBZONE MAP.—The term ‘HUBZone  
2           map’ means the map used by the Administration to  
3           identify HUBZones.”.

4           (d) REDESIGNATED AREAS.—Section 3(p)(4)(C)(i) of  
5           the Small Business Act (15 U.S.C. 632(p)(4)(C)(i)) is  
6           amended to read as follows:

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

11 **SEC. 7. ANNUAL REPORT ON SUSPENSION, DEBARMENT,**  
12 **AND PROSECUTION.**

13           The Administrator shall submit an annual report to  
14           the Committee on Small Business and Entrepreneurship  
15           of the Senate and the Committee on Small Business of  
16           the House of Representatives that contains—

17                   (1) the number of debarments from participa-  
18                   tion in programs of the Administration issued by the  
19                   Administrator during the 1-year period preceding  
20                   the date of the report, including—

21                           (A) the number of debarments that were  
22                           based on a conviction; and

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

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

5                   (A) the number of suspensions issued that  
6                   were based upon indictments; and

7                   (B) the number of suspensions issued that  
8                   were fact-based and did not involve an indict-  
9                   ment;

10           (3) the number of suspension and debarments  
11           issued by the Administrator during the 1-year period  
12           preceding the date of the report that were based  
13           upon referrals from offices of the Administration,  
14           other than the Office of Inspector General;

15           (4) the number of suspension and debarments  
16           issued by the Administrator during the 1-year period  
17           preceding the date of the report based upon referrals  
18           from the Office of Inspector General; and

19           (5) the number of persons that the Adminis-  
20           trator declined to debar or suspend after a referral  
21           described in paragraph (8), and the reason for each  
22           such decision.

○