

WOMEN’S PROCUREMENT PROGRAM EQUALIZATION ACT OF 2013

DECEMBER 11, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2452]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2452) to amend the Small Business Act with respect to the procurement program for women-owned small business concerns, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. AMENDMENT

The bill as considered by the Committee is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Women’s Procurement Program Equalization Act of 2013”.

SEC. 2. WOMEN’S PROCUREMENT PROGRAM EQUALIZATION.

Section 8(m) of the Small Business Act (15 U.S.C. 637(m)) is amended—

(1) in paragraph (2), so that subparagraph (E) reads as follows:

“(E) each of the concerns—

“(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

“(ii) is certified by the Administrator as a small business concern owned and controlled by women.”; and

(2) by adding at the end the following:

“(7) **SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESSES.**—In accordance with this section, a contracting officer may award a sole source contract to any small business concern meeting the requirements of section 8(m)(2)(A) of this Act if—

“(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(2)(A) will submit offers;

“(B) the anticipated award price of the contract (including options) will not exceed—

“(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

“(ii) \$4,000,000 in the case of any other contract opportunity; and

“(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

“(8) **SOLE SOURCE CONTRACTS FOR WOMEN OWNED SMALL BUSINESSES IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.**—In accordance with this section, a contracting officer may award a sole source contract to any small business concerns meeting the requirements of section 8(m)(3) of this Act if—

“(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(3) will submit offers;

“(B) the anticipated award price of the contract (including options) will not exceed—

“(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

“(ii) \$4,000,000 in the case of any other contract opportunity; and

“(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.”.

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

Section 15(h)(2)(E)(viii) of the Small Business Act (15 U.S.C. 644) is amended to read as follows:

“(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 section 8(m)(7);

“(VI) through sole source contracts awarded using the authority under section 8(m)(8) and in which the waiver authority under section 8(m)(3) was used;

“(VII) by industry in which the contracts described in subclauses (III) through (VI) were awarded; and

“(VIII) through unrestricted competition; and”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 2452, the “Women’s Procurement Program Equalization Act of 2013,” is to amend the Small Business Act (the Act)¹ to make technical changes to the Women-Owned Small Business (WOSB) Federal Contract Program enacted by Congress in 2000. The legislation permits the use of sole-source contracts for women-owned small businesses (WOSBs) in substantially under-represented industries and economically disadvantaged women-owned small businesses (EDWOSBs) if there is only one WOSB or EDWOSB that can perform the work and the value of the contract is below \$4 million generally or \$6.5 million for manufacturing. This creates parity with other small business contracting programs. Further, the legislation alters how small business concerns owned and controlled by women are certified in order to be eligible for the WOSB program.

III. NEED FOR LEGISLATION

The Act iterates Congress’s belief in the importance of small business participation in federal prime contracts and the resultant subcontracts. Specifically, the Act directs that:

To effectuate the purpose of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation’s full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchase and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government be made to small-business concerns.²

To effectuate these objectives, Congress has enacted six different contract programs overseen by the Small Business Administration (SBA). The WOSB Federal Contracting Program, which this legislation makes technical corrections to, was created in 2000 under § 811 of the Small Business Reauthorization Act of 2000.³ However, the program as originally envisioned only allowed set asides of contracts below a certain dollar threshold, and did not provide for any sole source authority. Due to challenges in identifying industries through the study as required under the law, the SBA did not im-

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

² 15 U.S.C. at § 644(a).

³ Consolidated Appropriations Act of 2001, Pub. L. No. 106–554, App. I, § 811, 114 Stat. 2763, 2763A–667, 2763A–708 (2000). Appendix I of the Consolidated Appropriations Act of 2001 contained the Small Business Reauthorization Act of 2000. It was later amended to remove the cap on the size of competitive set-aside contracts. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112–239 § 1697, 126 Stat. 1632, 2091 (2013).

plement the final rules on this program until October 2010⁴ and the WOSB program was not fully operational until 2011.

The Committee has a long standing practice of promoting parity between the six government contracting programs in the Act, and in 2012 reported out H.R. 4203, the Women’s Procurement Improvement Act of 2012.⁵ This legislation sought to remove the dollar caps on competitive set-aside contracts for WOSB and EDWOSB and create a sole source authority. Ultimately, only the provision removing the dollar caps was adopted into law,⁶ leaving WOSB and EDWOSB the only program without any sole source authority.

Prior to initial implementation of the procurement program, SBA received comments indicating that the inability to sole source awards was inconsistent with other contracting programs administered by the SBA and would be problematic to achieving the program’s objectives.⁷ However, as these limitations are statutory, the SBA could not alter them. SBA also believes this authority is necessary, as the SBA Administrator stated that in the quest to give WOSB optimal access to the federal market, “[a]nother important tool for federal agencies is sole-source authority. I’m encouraging Congress to give federal agencies this tool to level the playing field for women-owned business.”⁸ H.R. 2452 removes the limitation and aligns the WOSB program with other SBA contracting programs.

IV. HEARINGS

Since the changes made in the bill were of a technical nature, no hearings were necessary to address the legislation.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 5, 2014 and ordered H.R. 2452 reported to the House by a voice vote at 4:30 p.m. During the markup, no amendments were offered.

VI. 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 the legislation and amendments thereto. There were no recorded votes on H.R. 2452.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 2452

Section 1. Short title

This Section designates the bill as the “Women’s Procurement Program Equalization Act of 2013.”

⁴ Women-Owned Small Business Federal Contract Program; Final Rule, 75 Fed. Reg. 62,258 (Oct. 7, 2010).

⁵ H. Rep. No. 112-732 (2012).

⁶ National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239 § 1697, 126 Stat. 1632, 2091 (2013).

⁷ 75 Fed. Reg. at 62,258.

⁸ Maria Contreras-Sweet, Administrator, SBA, Address at Center for American Progress (Jun. 10, 2014) (*transcript available at* <https://www.sba.gov/content/entrepreneurial-equality-new-tools-more-inclusive-sba>).

Section 2. Women's procurement program equalization

Section 2 of H.R. 2452 amends § 8(m) of the Act in three places. First, it changes the requirements for the certification of WOSB and EDWOSB. Currently, § 8(m)(2)(E) requires that firms seeking to benefit from the program either be certified by a federal or state government, or a national certifying entity approved by SBA. Alternatively, it allows WOSB and EDWOSB concerns to self-certify, but requires that they provide documentation to the contracting officer to prove their status. This has led to the creation of an electronic document repository by SBA, where WOSB and EDWOSB upload information relevant to the ownership and control of the concern. Contracting officers are then expected to review this information, but the majority of contracting officers do not have the necessary training to interpret tax returns and business formation documents, creating the potential for fraud. Therefore, H.R. 2452 retains the provision permitting certification by federal and state governments or by a third-party national certifying entity approved by the SBA, but instead of offering the enhanced self-certification, H.R. 2452 offers as an alternative actual SBA certification.

Second, § 2 of H.R. 2452 adds a new paragraph (7) to the end of § 8(m) of the Act. The Act does not currently provide any authority to sole source contracts to EDWOSB. The new paragraph (7) allows contracting officers to sole source work to EDWOSB if: (1) the work is of a type and kind that could be set aside for EDWOSB; (2) the contracting officer determines that the concern is responsible, (3) the contracting officer does not have a reasonable expectation that two or more EDWOSBs will submit offers; and (4) the contracting officer believes award may be made at a fair and reasonable price. Further, the anticipated value of the award, including options, may not exceed \$6.5 million if the contract is for the manufacturing of goods, or \$4 million in all other cases. These are the same restrictions that apply to sole source awards to HUBZone program participants and service-disabled veteran-owned small business (SDVOSB) program concerns.⁹

Third, § 2 of H.R. 2452 adds a new paragraph (8) to the end of § 8(m) of the Act. The Act does not currently provide any authority to sole source contracts to WOSB. The new paragraph (8) allows contracting officers to sole source work to WOSB if: (1) the work is of a type and kind that could be set aside for WOSB; (2) the contracting officer determines that the concern is responsible, (3) the contracting officer does not have a reasonable expectation that two or more WOSBs will submit offers; and (4) the contracting officer believes award may be made at a fair and reasonable price. Further, the anticipated value of the award, including options, may not exceed \$6.5 million if the contract is for the manufacturing of goods, or \$4 million in all other cases. Again, these are the same restrictions that apply to sole source awards to HUBZone program participants and SDVOSB program concerns.

Section 3. Reporting on goals for procurement contracts awarded to small business concerns

Under Sec. 15(h)(2) of the Act, the SBA Administrator is required to submit a report to both Congress and the President regarding

⁹ See 15 U.S.C. § 657a(b)(2)(A) (HUBZone); *id.* at program, and § 657f(a) (SDVOSB).

the use of small business concerns in contracting and evaluating whether federal agencies are meeting their small business contracting goals. Currently, this report includes an analysis of the number and dollar amount of prime contracts for the majority of federal small business contracting programs; however WOSBs are not specifically included in this analytical requirement. Therefore, this section amends Sec. 15(h) of the Act to require the report also includes an analysis of the number and dollar amount of prime contracts awarded to WOSBs, including an analysis of the various industries that were awarded contracts and the type of contracting authority used.

VIII. CONGRESSIONAL BUDGET COST ESTIMATE

H.R. 2452—Women’s Procurement Program Equalization Act of 2013

Summary: H.R. 2452 would broaden the range of contracts that could be awarded to small businesses owned and controlled by women to include sole-source contracts (which are not available to this group under current law) if certain conditions are met. The bill also would require the Small Business Administration (SBA) to certify the ownership status of each small business seeking to participate in programs that provide contracting preferences to businesses owned and controlled by women.

CBO estimates that implementing H.R. 2452 would cost \$30 million over the 2015–2019 period, assuming appropriation of the necessary amounts. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net change in spending by those agencies would not be significant. Enacting H.R. 2452 would not affect revenues.

H.R. 2452 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2452 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015– 2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	8	6	6	6	6	32
Estimated Outlays	6	6	6	6	6	30

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in 2014, that the necessary amounts will be appropriated near the start of each fiscal year, and that spending will follow historical patterns for contract certification activities.

Under current law, federal agencies are authorized, under certain conditions, to restrict competition for contracts to procure goods or services to small businesses owned by women. To be eligible to compete for those contracts, such a business must certify to the contracting agency, using documentation approved by the SBA, that it is owned and controlled by women. H.R. 2452 would termi-

nate the self-certification option and require the SBA to certify the ownership status of small businesses wishing to take advantage of contract set-asides for women-owned businesses. In addition, the bill would broaden the range of contracting opportunities for businesses owned by women to include sole-source contracts (awarded through a non-competitive process), which are unavailable to this group under current law.

Based on information from the SBA and the General Services Administration, CBO estimates that implementing H.R. 2452 would cost \$30 million over the 2015–2019 period, assuming appropriation of the necessary amounts. That amount includes estimated costs to train contracting officers in federal agencies on the new eligibility rules, to hire additional staff, and to develop systems at the SBA to administer the new certification process.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Provisions of H.R. 2452 that change procedures for awarding contracts could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CHO estimates, however, that any net change in spending by those agencies would not be significant. Enacting H.R. 2452 would not affect revenues.

Intergovernmental and private-sector impact: H.R. 2452 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Michael Hirsch; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

IX. UNFUNDED MANDATES

H.R. 2452 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104–4, and would impose no costs on state, local or tribal governments.

X. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures.

The Committee does not adopt as its own the estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to §. 402 of the Congressional Budget Act of 1974. While the Congressional Budget Office estimates a cost of \$30 million over 5 years to implement H.R. 2452, the Committee does not believe that this legislation will require any additional budget authority or expenditures. As the bill authorizes no new funding and simply directs how current appropriations should be spent, the Committee believes that

no additional funds should be necessary to implement this legislation.

XI. OVERSIGHT FINDINGS

In accordance with clause (2)(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2452 are incorporated into the descriptive portions of this report.

XII. STATEMENT OF CONSTITUTIONAL AUTHORITY

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

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2452 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104–1.

XIV. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 2452 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 2452 does not contain any Congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XVI. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII of the Rules of the House, no provision of H.R. 2452 establishes or reauthorizes a program of the federal government known to be duplicative of another Federal program, a program that was included in any report from the GAO pursuant to Section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

XVII. DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House, H.R. 2452 does not direct any rulemaking.

XVIII. PERFORMANCE GOALS AND OBJECTIVES

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

H.R. 2452 creates parity among the federal small business contracting programs by permitting sole-source awards to WOSBs in substantially underrepresented industries and

EDWOSBs in instances where there is only one WOSB or EDWOSB who can perform and the value of the contract is below \$4 million or \$6.5 million in manufacturing.

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

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

SMALL BUSINESS ACT

* * * * *

SEC. 8. (a) * * *

* * * * *

(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

(1) * * *

(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) * * *

* * * * *

[(E) each of the concerns—

[(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

[(ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.]

(E) *each of the concerns—*

(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

(ii) is certified by the Administrator as a small business concern owned and controlled by women.

* * * * *

(7) *SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESSES.—In accordance with this section, a contracting officer may award a sole source contract to any small business concern meeting the requirements of section 8(m)(2)(A) of this Act if—*

(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(2)(A) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

(ii) \$4,000,000 in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(8) **SOLE SOURCE CONTRACTS FOR WOMEN OWNED SMALL BUSINESSES IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.**—In accordance with this section, a contracting officer may award a sole source contract to any small business concerns meeting the requirements of section 8(m)(3) of this Act if—

(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(3) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

(ii) \$4,000,000 in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

* * * * *

SEC. 15. (a) * * *

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

(1) * * *

(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) * * *

* * * * *

(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) * * *

* * * * *

[(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; and

【(V) through unrestricted competition; 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 section 8(m)(7);

(VI) through sole source contracts awarded using the authority under section 8(m)(8) and in which the waiver authority under section 8(m)(3) was used;

(VII) by industry in which the contracts described in subclauses (III) through (VI) were awarded; and

(VIII) through unrestricted competition; and

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