

112TH CONGRESS
2D SESSION

S. 3213

To amend the Small Business Act with respect to goals for procurement contracts awarded to small business concerns, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2012

Mr. CARDIN (for himself and Ms. LANDRIEU) introduced the following bill;
which was read twice and referred to the Committee on Small Business
and Entrepreneurship

A BILL

To amend the Small Business Act with respect to goals for procurement contracts awarded to small business concerns, 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
5 Goaling Act of 2012”.

1 **SEC. 2. GOALS FOR PROCUREMENT CONTRACTS AWARDED**
2 **TO SMALL BUSINESS CONCERNS.**

3 (a) **HEADING.**—Section 15(g) of the Small Business
4 Act (15 U.S.C. 644(g)) is amended by striking the sub-
5 section enumerator and inserting the following:

6 “(g) **GOALS FOR PROCUREMENT CONTRACTS**
7 **AWARDED TO SMALL BUSINESS CONCERNS.**—”.

8 (b) **GOVERNMENTWIDE GOALS.**—Paragraph (1) of
9 section 15(g) of the Small Business Act (15 U.S.C.
10 644(g)) is amended to read as follows:

11 “(1) **GOVERNMENTWIDE GOALS.**—The Presi-
12 dent shall annually establish Governmentwide goals
13 for procurement contracts awarded to small business
14 concerns, small business concerns owned and con-
15 trolled by service-disabled veterans, qualified
16 HUBZone small business concerns, small business
17 concerns owned and controlled by socially and eco-
18 nomically disadvantaged individuals, and small busi-
19 ness concerns owned and controlled by women in ac-
20 cordance with the following:

21 “(A) The Governmentwide goal for partici-
22 pation by small business concerns shall be es-
23 tablished at not less than 25 percent of the
24 total value of all prime contract awards for each
25 fiscal year and 40 percent of the total value of
26 all subcontract awards for each fiscal year.

1 “(B) The Governmentwide goal for partici-
2 pation by small business concerns owned and
3 controlled by service-disabled veterans shall be
4 established at not less than 3 percent of the
5 total value of all prime contract and at not less
6 than 3 percent of the total value of all sub-
7 contract awards for each fiscal year.

8 “(C) The Governmentwide goal for partici-
9 pation by qualified HUBZone small business
10 concerns shall be established at not less than 3
11 percent of the total value of all prime contract
12 and at not less than 3 percent of the total value
13 of all subcontract awards for each fiscal year.

14 “(D) The Governmentwide goal for partici-
15 pation by small business concerns owned and
16 controlled by socially and economically dis-
17 advantaged individuals shall be established at
18 not less than 5 percent of the total value of all
19 prime contract and at not less than 5 percent
20 of the total value of all subcontract awards for
21 each fiscal year.

22 “(E) The Governmentwide goal for partici-
23 pation by small business concerns owned and
24 controlled by women shall be established at not
25 less than 5 percent of the total value of all

1 prime contract and at not less than 5 percent
 2 of the total value of all subcontract awards for
 3 each fiscal year.

4 “(F) The Administrator shall ensure that
 5 the cumulative annual prime contract goals for
 6 all agencies meet or exceed the annual Govern-
 7 ment-wide prime contract goal established by
 8 the President pursuant to this paragraph.”.

9 (c) AGENCY GOALS.—Paragraph (2) of section 15(g)
 10 of the Small Business Act (15 U.S.C. 644(g)) is amended
 11 to read as follows:

12 “(2) AGENCY GOALS.—

13 “(A) ESTABLISHMENT.—The head of each
 14 Federal agency shall annually establish, for the
 15 agency that individual heads, goals for procure-
 16 ment contracts awarded to small business con-
 17 cerns, small business concerns owned and con-
 18 trolled by service-disabled veterans, qualified
 19 HUBZone small business concerns, small busi-
 20 ness concerns owned and controlled by socially
 21 and economically disadvantaged individuals, and
 22 small business concerns owned and controlled
 23 by women.

24 “(B) RELATIONSHIP TO GOVERNMENT-
 25 WIDE GOALS.—

1 “(i) SCOPE.—The goals established by
2 the head of a Federal agency under sub-
3 paragraph (A) shall be in the same format
4 as the goals established by the President
5 under paragraph (1) and shall address
6 both prime contract and subcontract
7 awards.

8 “(ii) REQUIREMENT TO MEET OR EX-
9 CEED GOVERNMENTWIDE GOALS.—The
10 participation percentage applicable to each
11 goal for a fiscal year established under
12 subparagraph (A) for small business con-
13 cerns owned and controlled by service-dis-
14 abled veterans, qualified HUBZone small
15 business concerns, small business concerns
16 owned and controlled by socially and eco-
17 nomically disadvantaged individuals, and
18 small business concerns owned and con-
19 trolled by women may not be less than the
20 participation percentage applicable to the
21 Governmentwide goal for such fiscal year
22 established under paragraph (1) for such
23 category.

24 “(C) CONSULTATION REQUIRED.—

1 “(i) IN GENERAL.—In establishing
2 goals under subparagraph (A), the head of
3 each Federal agency shall consult with the
4 Administrator.

5 “(ii) DISAGREEMENTS.—If the Ad-
6 ministrator and the head of a Federal
7 agency fail to agree on a goal established
8 under subparagraph (A), the disagreement
9 shall be submitted to the Administrator for
10 Federal Procurement Policy for final deter-
11 mination.

12 “(D) PLAN FOR ACHIEVING GOALS.—After
13 establishing goals under subparagraph (A) for a
14 fiscal year, the head of each Federal agency
15 shall develop a plan for achieving such goals,
16 which shall apportion responsibilities among the
17 employees of such agency having procurement
18 powers.

19 “(E) EXPANDED PARTICIPATION.—In es-
20 tablishing goals under subparagraph (A), the
21 head of each Federal agency shall make a con-
22 sistent effort to annually expand participation
23 by small business concerns from each industry
24 category in procurement contracts of such agen-
25 cy, 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.

“(F) CONSIDERATION.—The head of each Federal agency, in attempting to attain expanded participation under subparagraph (E), 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).

“(G) COMMUNICATION REGARDING GOALS.—

“(i) IMPORTANCE OF ACHIEVING GOALS.—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).

1 “(ii) PROCUREMENT EMPLOYEES OR
 2 PROGRAM MANAGERS DESCRIBED.—A pro-
 3 curement employee or program manager
 4 described in this clause is a senior procure-
 5 ment executive, senior program manager,
 6 or Director of Small and Disadvantaged
 7 Business Utilization of a Federal agency
 8 having contracting authority.”.

9 (d) ENFORCEMENT; DETERMINATIONS OF THE
 10 TOTAL VALUE OF CONTRACT AWARDS.—Section 15(g) of
 11 the Small Business Act (15 U.S.C. 644(g)), as amended
 12 by this Act, is further amended by adding at the end the
 13 following:

14 “(3) ENFORCEMENT.—If the Administrator
 15 does not issue the report required in paragraph (2)
 16 on or before the date that is 120 days after the end
 17 of the prior fiscal year, the Administrator may not
 18 carry out or establish any pilot program until the
 19 date on which the Administrator issues the report.

20 “(4) DETERMINATIONS OF THE TOTAL VALUE
 21 OF CONTRACT AWARDS.—For purposes of the goals
 22 established under paragraphs (1) and (2), the total
 23 value of contract awards for a fiscal year may not
 24 be determined in a manner that excludes the value
 25 of a contract based on—

1 “(A) where the contract is awarded;

2 “(B) where the contract is performed;

3 “(C) whether the contract is mandated by
4 Federal law to be performed by an entity other
5 than a small business concern;

6 “(D) whether funding for the contract is
7 made available in an appropriations Act, if the
8 contract is subject to the Competition in Con-
9 tracting Act; or

10 “(E) whether the contract is subject to the
11 Federal Acquisition Regulation.”.

12 **SEC. 3. REPORTING ON GOALS FOR PROCUREMENT CON-**
13 **TRACTS AWARDED TO SMALL BUSINESS CON-**
14 **CERNS.**

15 Subsection (h) of section 15 of the Small Business
16 Act (15 U.S.C. 644) is amended to read as follows:

17 “(h) REPORTING ON GOALS FOR PROCUREMENT
18 CONTRACTS AWARDED TO SMALL BUSINESS CON-
19 CERNs.—

20 “(1) AGENCY REPORTS.—At the conclusion of
21 each fiscal year, the head of each Federal agency
22 shall submit to the Administrator a report describ-
23 ing—

24 “(A) the extent of the participation by
25 small business concerns, small business con-

cerns 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)(A) with respect to such fiscal year; and

“(C) any justifications for a 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 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;

1 “(C) a determination of whether each goal
2 established by the head of a Federal agency
3 under subsection (g)(2)(A) for such fiscal year
4 was achieved;

5 “(D) the reasons for any failure to achieve
6 a goal established under paragraph (1) or
7 (2)(A) of subsection (g) for such fiscal year and
8 a description of actions planned by the applica-
9 ble agency to address such failure, except that
10 the Administrator must concur with each reme-
11 diation plan;

12 “(E) for the Federal Government and each
13 Federal agency, an analysis of the number and
14 dollar amount of prime contracts awarded dur-
15 ing such fiscal year to—

16 “(i) small business concerns—

17 “(I) in the aggregate;

18 “(II) through sole source con-
19 tracts;

20 “(III) through competitions re-
21 stricted to small business concerns;
22 and

23 “(IV) through unrestricted com-
24 petition;

1 “(ii) small business concerns owned
2 and controlled by service-disabled vet-
3 erans—

4 “(I) in the aggregate;

5 “(II) through sole source con-
6 tracts;

7 “(III) through competitions re-
8 stricted to small business concerns;

9 “(IV) through competitions re-
10 stricted to small business concerns
11 owned and controlled by service-dis-
12 abled veterans; and

13 “(V) through unrestricted com-
14 petition;

15 “(iii) qualified HUBZone small busi-
16 ness concerns—

17 “(I) in the aggregate;

18 “(II) through sole source con-
19 tracts;

20 “(III) through competitions re-
21 stricted to small business concerns;

22 “(IV) through competitions re-
23 stricted to qualified HUBZone small
24 business concerns;

1 “(V) through unrestricted com-
2 petition where a price evaluation pref-
3 erence was used; and

4 “(VI) through unrestricted com-
5 petition where a price evaluation pref-
6 erence was not used;

7 “(iv) small business concerns owned
8 and controlled by socially and economically
9 disadvantaged individuals—

10 “(I) in the aggregate;

11 “(II) through sole source con-
12 tracts;

13 “(III) through competitions re-
14 stricted to small business concerns;

15 “(IV) through competitions re-
16 stricted to small business concerns
17 owned and controlled by socially and
18 economically disadvantaged individ-
19 uals; and

20 “(V) through unrestricted com-
21 petition;

22 “(v) small business concerns owned by
23 an Alaska Native Corporation—

24 “(I) in the aggregate;

1 “(II) through sole source con-
2 tracts;

3 “(III) through competitions re-
4 stricted to small business concerns;

5 “(IV) through competitions re-
6 stricted to small business concerns
7 owned and controlled by socially and
8 economically disadvantaged individ-
9 uals; and

10 “(V) through unrestricted com-
11 petition; and

12 “(vi) small business concerns owned
13 and controlled by women—

14 “(I) in the aggregate;

15 “(II) through competitions re-
16 stricted to small business concerns;

17 “(III) through competitions re-
18 stricted using the authority under sec-
19 tion 8(m)(2);

20 “(IV) through competitions re-
21 stricted using the authority under sec-
22 tion 8(m)(2) and in which the waiver
23 authority under section 8(m)(3) was
24 used; and

1 “(V) through unrestricted com-
2 petition; and

3 “(F) for the Federal Government and each
4 Federal agency, the number, dollar amount,
5 and distribution with respect to the North
6 American Industry Classification System of
7 subcontracts awarded during such fiscal year to
8 small business concerns, small business con-
9 cerns owned and controlled by service-disabled
10 veterans, qualified HUBZone small business
11 concerns, small business concerns owned and
12 controlled by socially and economically dis-
13 advantaged individuals, and small business con-
14 cerns owned and controlled by women.”.

15 **SEC. 4. SENIOR EXECUTIVES.**

16 (a) TRAINING.—Section 3396(a) of title 5, United
17 States Code, is amended by adding at the end the fol-
18 lowing: “A program established under this subsection shall
19 include training with respect to Federal procurement re-
20 quirements, including contracting requirements under the
21 Small Business Act (15 U.S.C. 631 et seq.).”.

22 (b) PERFORMANCE APPRAISALS.—Section 4313 of
23 title 5, United States Code, is amended—

24 (1) in paragraph (4), by striking “and” at the
25 end;

1 (2) in paragraph (5), by striking the period at
2 the end and inserting “; and”; and
3 (3) by adding at the end the following:
4 “(6) meeting the goals established by the head
5 of the agency under section 15(g)(2)(A) of the Small
6 Business Act (15 U.S.C. 644(g)(2)(A)).”.

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