

## Union Calendar No. 523

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3850

**[Report No. 112-720, Part I]**

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

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### IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2012

Mr. GRAVES of Missouri (for himself, Mr. OWENS, and Mr. SCHILLING) 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

DECEMBER 21, 2012

Additional sponsors: Mr. CHABOT, Mrs. ELLMERS, Mr. MULVANEY, Mr. WALSH of Illinois, Mr. WEST, Mr. HANNA, Mr. TIPTON, and Ms. HERRERA BEUTLER

DECEMBER 21, 2012

Reported from the Committee on Small Business with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 21, 2012

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 31, 2012]

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## **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 “Government Efficiency*  
5 *through Small Business Contracting Act of 2012”.*

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

8        *(a) IN GENERAL.—Section 15(g) of the Small Business*  
9 *Act (15 U.S.C. 644(g)) is amended by striking the sub-*  
10 *section enumerator and inserting the following:*

11        *“(g) GOALS FOR PROCUREMENT CONTRACTS AWARD-*  
12 *ED TO SMALL BUSINESS CONCERNS.—”.*

13        *(b) GOVERNMENTWIDE GOALS.—Paragraph (1) of sec-*  
14 *tion 15(g) of such Act (15 U.S.C. 644(g)) is amended to*  
15 *read as follows:*

16        *“(1) GOVERNMENTWIDE GOALS.—The President*  
17 *shall annually establish Governmentwide goals for*  
18 *procurement contracts awarded to small business con-*  
19 *cerns, small business concerns owned and controlled*  
20 *by service-disabled veterans, qualified HUBZone*  
21 *small business concerns, small business concerns*  
22 *owned and controlled by socially and economically*  
23 *disadvantaged individuals, and small business con-*  
24 *cerns owned and controlled by women in accordance*  
25 *with the following:*

1           “(A) *The Governmentwide goal for partici-*  
2           *ipation by small business concerns shall be estab-*  
3           *lished at not less than 25 percent of the total*  
4           *value of all prime contract awards for each fiscal*  
5           *year and 40 percent of the total value of all sub-*  
6           *contract awards for each fiscal year.*

7           “(B) *The Governmentwide goal for partici-*  
8           *ipation by small business concerns owned and*  
9           *controlled by service-disabled veterans shall be es-*  
10          *tablished at not less than 3 percent of the total*  
11          *value of all prime contract and at not less than*  
12          *3 percent of the total value of all subcontract*  
13          *awards for each fiscal year.*

14          “(C) *The Governmentwide goal for partici-*  
15          *ipation by qualified HUBZone small business*  
16          *concerns shall be established at not less than 3*  
17          *percent of the total value of all prime contract*  
18          *and at not less than 3 percent of the total value*  
19          *of all subcontract awards for each fiscal year.*

20          “(D) *The Governmentwide goal for partici-*  
21          *ipation by small business concerns owned and*  
22          *controlled by socially and economically dis-*  
23          *advantaged individuals shall be established at*  
24          *not less than 5 percent of the total value of all*  
25          *prime contract and at not less than 5 percent of*

1           *the total value of all subcontract awards for each*  
2           *fiscal year.*

3           “(E) *The Governmentwide goal for partici-*  
4           *pation by small business concerns owned and*  
5           *controlled by women shall be established at not*  
6           *less than 5 percent of the total value of all prime*  
7           *contract and at not less than 5 percent of the*  
8           *total value of all subcontract awards for each fis-*  
9           *cal year.”.*

10          *(c) AGENCY GOALS.—Paragraph (2) of section 15(g)*  
11          *of such Act (15 U.S.C. 644(g)) is amended to read as fol-*  
12          *lows:*

13                 “(2) *AGENCY GOALS.—*

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

1                   “(B) *RELATIONSHIP TO GOVERNMENTWIDE*  
2                   *GOALS.*—

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

9                   “(ii) *REQUIREMENT TO MEET OR EX-*  
10                   *CEED GOVERNMENTWIDE GOALS.*—*With re-*  
11                   *spect to each goal for a fiscal year estab-*  
12                   *lished under subparagraph (A) for a cat-*  
13                   *egory of small business concern, the partici-*  
14                   *ipation percentage applicable to such goal*  
15                   *may not be less than the participation per-*  
16                   *centage applicable to the Governmentwide*  
17                   *goal for such fiscal year established under*  
18                   *paragraph (1) for such category.*

19                   “(C) *CONSULTATION REQUIRED.*—

20                   “(i) *IN GENERAL.*—*In establishing*  
21                   *goals under subparagraph (A), the head of*  
22                   *each Federal agency shall consult with the*  
23                   *Administrator.*

24                   “(ii) *DISAGREEMENTS.*—*If the Admin-*  
25                   *istrator and the head of a Federal agency*

1           *fail to agree on a goal established under*  
2           *subparagraph (A), the disagreement shall be*  
3           *submitted to the Administrator for Federal*  
4           *Procurement Policy for final determination.*

5           “(D) *PLAN FOR ACHIEVING GOALS.*—*After*  
6           *establishing goals under subparagraph (A) for a*  
7           *fiscal year, the head of each Federal agency shall*  
8           *develop a plan for achieving such goals, which*  
9           *shall apportion responsibilities among the em-*  
10          *ployees of such agency having procurement pow-*  
11          *ers.*

12          “(E) *EXPANDED PARTICIPATION.*—*In estab-*  
13          *lishing goals under subparagraph (A), the head*  
14          *of each Federal agency shall make a consistent*  
15          *effort to annually expand participation by small*  
16          *business concerns from each industry category in*  
17          *procurement contracts of such agency, including*  
18          *participation by small business concerns owned*  
19          *and controlled by service-disabled veterans,*  
20          *qualified HUBZone small business concerns,*  
21          *small business concerns owned and controlled by*  
22          *socially and economically disadvantaged indi-*  
23          *viduals, and small business concerns owned and*  
24          *controlled by women.*

1           “(F) *CONSIDERATION.*—*The head of each*  
2           *Federal agency, in attempting to attain ex-*  
3           *expanded participation under subparagraph (E),*  
4           *shall consider—*

5                     “(i) *contracts awarded as the result of*  
6                     *unrestricted competition; and*

7                     “(ii) *contracts awarded after competi-*  
8                     *tion restricted to eligible small business con-*  
9                     *cerns under this section and under the pro-*  
10                    *gram established under section 8(a).*

11           “(G) *COMMUNICATION REGARDING GOALS.*—

12                    “(i) *IMPORTANCE OF ACHIEVING*  
13                    *GOALS.*—*Each procurement employee or*  
14                    *program manager described in clause (ii)*  
15                    *shall communicate to the subordinates of the*  
16                    *procurement employee or program manager*  
17                    *the importance of achieving goals estab-*  
18                    *lished under subparagraph (A).*

19                    “(ii) *PROCUREMENT EMPLOYEES OR*  
20                    *PROGRAM MANAGERS DESCRIBED.*—*A pro-*  
21                    *urement employee or program manager de-*  
22                    *scribed in this clause is a senior procure-*  
23                    *ment executive, senior program manager, or*  
24                    *Director of Small and Disadvantaged Busi-*



1                    *ness Utilization of a Federal agency having*  
2                    *contracting authority.”.*

3            *(d) ENFORCEMENT; DETERMINATIONS OF THE TOTAL*  
4 *VALUE OF CONTRACT AWARDS.—Section 15(g) of the Small*  
5 *Business Act (15 U.S.C. 644(g)), as amended by this Act,*  
6 *is further amended by adding at the end the following:*

7                    *“(3) ENFORCEMENT.—If the Administrator does*  
8                    *not issue the report required in subsection (h)(2) on*  
9                    *or before the date that is 120 days after the end of*  
10                   *the prior fiscal year, the Administrator may not*  
11                   *carry out or establish any pilot program until the*  
12                   *date on which the Administrator issues the report.*

13                   *“(4) DETERMINATIONS OF THE TOTAL VALUE OF*  
14                   *CONTRACT AWARDS.—For purposes of the goals estab-*  
15                   *lished under paragraphs (1) and (2), the total value*  
16                   *of contract awards for a fiscal year may not be deter-*  
17                   *mined in a manner that excludes the value of a con-*  
18                   *tract based on—*

19                   *“(A) where the contract is awarded;*

20                   *“(B) where the contract is performed;*

21                   *“(C) whether the contract is mandated by*  
22                   *Federal law to be performed by an entity other*  
23                   *than a small business concern;*

24                   *“(D) whether funding for the contract is*  
25                   *made available in an appropriations Act, if the*

1           *contract is subject to the Competition in Con-*  
 2           *tracting Act of 1984; or*

3                     *“(E) whether the contract is subject to the*  
 4           *Federal Acquisition Regulation.”.*

5   **SEC. 3. REPORTING ON GOALS FOR PROCUREMENT CON-**  
 6                     **TRACTS AWARDED TO SMALL BUSINESS CON-**  
 7                     **CERNS.**

8           *Subsection (h) of section 15 of the Small Business Act*  
 9   *(15 U.S.C. 644) is amended to read as follows:*

10           *“(h) REPORTING ON GOALS FOR PROCUREMENT CON-*  
 11   *TRACTS AWARDED TO SMALL BUSINESS CONCERNS.—*

12                     *“(1) AGENCY REPORTS.—At the conclusion of*  
 13   *each fiscal year, the head of each Federal agency shall*  
 14   *submit to the Administrator a report describing—*

15                             *“(A) the extent of the participation by small*  
 16   *business concerns, small business concerns owned*  
 17   *and controlled by veterans (including service-dis-*  
 18   *abled veterans), qualified HUBZone small busi-*  
 19   *ness concerns, small business concerns owned and*  
 20   *controlled by socially and economically dis-*  
 21   *advantaged individuals, and small business con-*  
 22   *cerns owned and controlled by women in the pro-*  
 23   *curement contracts of such agency during such*  
 24   *fiscal year;*

1           “(B) whether the agency achieved the goals  
2           established for the agency under subsection  
3           (g)(2)(A) with respect to such fiscal year; and

4           “(C) any justifications for a failure to  
5           achieve such goals.

6           “(2) *REPORTS BY ADMINISTRATOR.*—Not later  
7           than 60 days after receiving a report from each Fed-  
8           eral agency under paragraph (1) with respect to a fis-  
9           cal year, the Administrator shall submit to the Presi-  
10          dent and Congress, and to make available on a public  
11          website, a report that includes—

12           “(A) a copy of each report submitted to the  
13          Administrator under paragraph (1);

14           “(B) a determination of whether each goal  
15          established by the President under subsection  
16          (g)(1) for such fiscal year was achieved;

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

21           “(D) the reasons for any failure to achieve  
22          a goal established under paragraph (1) or (2)(A)  
23          of subsection (g) for such fiscal year and a de-  
24          scription of actions planned by the applicable  
25          agency to address such failure, except that the

1            *Administrator must concur with each remedi-*  
2            *ation plan;*

3            *“(E) for the Federal Government and each*  
4            *Federal agency, an analysis of the number and*  
5            *dollar amount of prime contracts awarded dur-*  
6            *ing such fiscal year to—*

7            *“(i) small business concerns—*

8            *“(I) in the aggregate;*

9            *“(II) through sole source con-*  
10           *tracts;*

11           *“(III) through competitions re-*  
12           *stricted to small business concerns; and*

13           *“(IV) through unrestricted com-*  
14           *petition;*

15           *“(ii) small business concerns owned*  
16           *and controlled by service-disabled vet-*  
17           *erans—*

18           *“(I) in the aggregate;*

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

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

23           *“(IV) through competitions re-*  
24           *stricted to small business concerns*

1                   *owned and controlled by service-dis-*  
2                   *abled veterans; and*

3                   “*(V) through unrestricted com-*  
4                   *petition;*

5                   “*(iii) qualified HUBZone small busi-*  
6                   *ness concerns—*

7                   “*(I) in the aggregate;*

8                   “*(II) through sole source con-*  
9                   *tracts;*

10                  “*(III) through competitions re-*  
11                  *stricted to small business concerns;*

12                  “*(IV) through competitions re-*  
13                  *stricted to qualified HUBZone small*  
14                  *business concerns;*

15                  “*(V) through unrestricted com-*  
16                  *petition where a price evaluation pref-*  
17                  *erence was used; and*

18                  “*(VI) through unrestricted com-*  
19                  *petition where a price evaluation pref-*  
20                  *erence was not used;*

21                  “*(iv) small business concerns owned*  
22                  *and controlled by socially and economically*  
23                  *disadvantaged individuals—*

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;

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

12          “(VI) by reason of that concern’s  
13 certification as a small business owned  
14 and controlled by socially and eco-  
15 nomically disadvantaged individuals;

16          “(v) small business concerns owned by  
17 an Alaska Native Corporation—

18           “(I) in the aggregate;

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

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

23           “(IV) through competitions re-  
24 stricted to small business concerns  
25 owned and controlled by socially and

1 *economically disadvantaged individ-*  
2 *uals; and*

3 *“(V) through unrestricted com-*  
4 *petition; and*

5 *“(vi) small business concerns owned*  
6 *and controlled by women—*

7 *“(I) in the aggregate;*

8 *“(II) through competitions re-*  
9 *stricted to small business concerns;*

10 *“(III) through competitions re-*  
11 *stricted using the authority under sec-*  
12 *tion 8(m)(2);*

13 *“(IV) through competitions re-*  
14 *stricted using the authority under sec-*  
15 *tion 8(m)(2) and in which the waiver*  
16 *authority under section 8(m)(3) was*  
17 *used; and*

18 *“(V) through unrestricted com-*  
19 *petition; and*

20 *“(F) for the Federal Government and each*  
21 *Federal agency, the number, dollar amount, and*  
22 *distribution with respect to the North American*  
23 *Industry Classification System of subcontracts*  
24 *awarded during such fiscal year to small busi-*  
25 *ness concerns, small business concerns owned and*

1           *controlled by service-disabled veterans, qualified*  
2           *HUBZone small business concerns, small busi-*  
3           *ness concerns owned and controlled by socially*  
4           *and economically disadvantaged individuals,*  
5           *and small business concerns owned and con-*  
6           *trolled by women.”.*

7   **SEC. 4. SENIOR EXECUTIVES.**

8           (a) *TRAINING.*—*Programs established for the develop-*  
9           *ment of senior executives under section 3396(a) of title 5,*  
10           *United States Code, shall include training with respect to*  
11           *Federal procurement requirements, including contracting*  
12           *requirements under the Small Business Act (15 U.S.C. 631*  
13           *et seq.).*

14           (b) *SABBATICALS.*—*If a Federal agency does not*  
15           *achieve, with respect to a fiscal year, a goal established by*  
16           *the head of such agency under section 15(g)(2)(A) of the*  
17           *Small Business Act (15 U.S.C. 644(g)(2)(A)), a senior exec-*  
18           *utive within that agency may not be granted, during the*  
19           *succeeding fiscal year, a sabbatical under section 3396(c)*  
20           *of title 5, United States Code.*

21           (c) *INCENTIVE AWARDS.*—*If a Federal agency does not*  
22           *achieve, with respect to a fiscal year, a goal established by*  
23           *the head of such agency under section 15(g)(2)(A) of the*  
24           *Small Business Act (15 U.S.C. 644(g)(2)(A)), a senior exec-*  
25           *utive within that agency may not receive, during the suc-*



1 ceeding fiscal year, any incentive award under subchapter  
2 I of chapter 45 of title 5, United States Code.

3 (d) *SENIOR EXECUTIVE DEFINED.*—In this section, the  
4 term “senior executive” has the meaning given that term  
5 in section 3132(a) of title 5, United States Code.

6 **SEC. 5. SENSE OF CONGRESS.**

7 *It is the sense of Congress that the contracting provi-*  
8 *sions of the Small Business Act shall apply to the leasing*  
9 *of buildings and office space by the United States, and shall*  
10 *not apply to any leasing transaction between private par-*  
11 *ties.*

Union Calendar No. 523

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3850**

[Report No. 112-720, Part I]

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## **A BILL**

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