

118TH CONGRESS  
1ST SESSION

# S. 2720

To amend the Small Business Act regarding Federal contract requirements.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 2023

Ms. ERNST 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 amend the Small Business Act regarding Federal contract requirements.

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 “Accountability and  
5 Clarity in Contracts to Engage Small Suppliers and Small  
6 Businesses Act”.

7 **SEC. 2. SMALL BUSINESS INDUSTRIAL BASE FEDERAL CON-**  
8 **TRACTING MATTERS.**

9 (a) ACCESSIBILITY AND CLARITY IN SMALL BUSI-  
10 NESS CONTRACTS.—

11 (1) DEFINITIONS.—In this section—

1 (A) the term “covered notice” means a no-  
2 tice pertaining to small business concerns, such  
3 as a sources sought notice or solicitation re-  
4 stricted to competition among small business  
5 concerns or covered small business concerns,  
6 published by a Federal agency on SAM.gov or  
7 any successor website marketing Federal con-  
8 tract opportunities;

9 (B) the term “covered small business con-  
10 cern” means—

11 (i) a small business concern owned  
12 and controlled by women, a small business  
13 concern owned and controlled by veterans,  
14 a small business concern owned and con-  
15 trolled by service-disabled veterans, or a  
16 qualified HUBZone small business con-  
17 cern, as those terms are defined in section  
18 3 of the Small Business Act (15 U.S.C.  
19 632); and

20 (ii) a socially and economically dis-  
21 advantaged small business concern, as de-  
22 fined in section 8(a)(4)(A) of the Small  
23 Business Act (15 U.S.C. 637(a)(4)(A));  
24 and

1 (C) the terms “Federal agency” and  
2 “small business concern” have the meanings  
3 given those terms in section 3 of the Small  
4 Business Act (15 U.S.C. 632).

5 (2) INCLUSION OF KEY WORDS IN NOTICES FOR  
6 SMALL BUSINESS CONTRACT ACTIONS.—Each cov-  
7 ered notice shall, to the maximum extent practicable,  
8 include key words and contract requirements in the  
9 title or description of the covered notice such that  
10 small business concerns seeking contract opportuni-  
11 ties using the search function of SAM.gov or any  
12 successor website can easily identify and understand  
13 those opportunities.

14 (3) PLAIN LANGUAGE.—

15 (A) IN GENERAL.—Each covered notice  
16 shall be written in a manner that is clear, con-  
17 cise, and accessible to the reader such that a  
18 small business concern can easily understand  
19 the intent of the Federal agency.

20 (B) EXCEPTION.—If the covered notice  
21 cannot meet the requirement under subpara-  
22 graph (A) due to requirements applicable to the  
23 covered notice from regulation or law, the Fed-  
24 eral agency shall include with the covered notice  
25 a cover page adequately summarizing the con-

1            tents of the covered notice, written in a clear,  
 2            concise, and accessible manner, such that a  
 3            small business concern can easily understand  
 4            the intent of the Federal agency.

5            (4) ATTACHMENTS.—A Federal agency may not  
 6            meet the requirement in paragraph (2) by only in-  
 7            cluding key words and contract requirements in a  
 8            document that is attached to the covered notice.

9            (5) RULEMAKING.—Not later than 90 days  
 10           after the date of enactment of this Act, the Adminis-  
 11           trator of the Small Business Administration shall  
 12           promulgate regulations to carry out this section.

13           (b) PRIORITIZING ENGAGING MORE SMALL BUSI-  
 14           NESSES IN FEDERAL PROCUREMENT.—

15           (1) IN GENERAL.—Section 15 of the Small  
 16           Business Act (15 U.S.C. 644) is amended—

17           (A) in subsection (g)—

18           (i) by inserting after “(g)” the fol-  
 19           lowing: “GOALS FOR PARTICIPATION OF  
 20           SMALL BUSINESS CONCERNS IN PROCURE-  
 21           MENT CONTRACTS.—”; and

22           (ii) in paragraph (1)—

23           (I) in subparagraph (A)(i), by  
 24           striking the second sentence; and

1 (II) by adding at the end the fol-  
2 lowing:

3 “(C) REQUIREMENT.—In meeting each of  
4 the goals under subparagraph (A), the Govern-  
5 ment shall ensure the participation of a broad  
6 spectrum of small business concerns from a  
7 wide variety of industries.”;

8 (B) in subsection (h)(1)—

9 (i) in subparagraph (C), by striking  
10 “and” at the end;

11 (ii) in subparagraph (D), by striking  
12 the period at the end and inserting “;  
13 and”; and

14 (iii) by adding at the end the fol-  
15 lowing:

16 “(E) the information described in clauses  
17 (ii) through (iv) of subsection (y)(2)(B).”; and

18 (C) in subsection (y)—

19 (i) in paragraph (2)—

20 (I) by redesignating subpara-  
21 graphs (A) and (B) as clauses (i) and  
22 (ii), respectively, and adjusting the  
23 margins accordingly;

24 (II) by inserting before clause (i),  
25 as so redesignated, the following:

1 “(A) GOALS.—”;

2 (III) in clause (i), as so redesign-  
3 nated, by inserting “PRIME CONTRACT  
4 GOALS.—” before “A determination”;

5 (IV) in clause (ii), as so redesign-  
6 nated, by inserting “SUBCONTRACT  
7 GOALS.—” before “A determination”;

8 (V) by striking subparagraphs  
9 (C) and (D) and inserting the fol-  
10 lowing:

11 “(B) COMPOSITION OF THE SMALL BUSI-  
12 NESS INDUSTRIAL BASE.—

13 “(i) TOTAL NUMBER OF SMALL BUSI-  
14 NESS CONCERNS.—The number of small  
15 business concerns, small business concerns  
16 owned and controlled by service-disabled  
17 veterans, qualified HUBZone small busi-  
18 ness concerns, small business concerns  
19 owned and controlled by socially and eco-  
20 nomically disadvantaged individuals, and  
21 small business concerns owned and con-  
22 trolled by women—

23 “(I) awarded prime contracts  
24 during the fiscal year compared to the  
25 prior fiscal year, including a break-

1 down by North American Industry  
2 Classification System code, if avail-  
3 able; and

4 “(II) awarded subcontracts dur-  
5 ing the fiscal year compared to the  
6 prior fiscal year, including a break-  
7 down by North American Industry  
8 Classification System code, if avail-  
9 able.

10 “(ii) MATURITY OF SMALL BUSINESS  
11 CONCERNS.—A breakdown of the number  
12 of new small business entrants, recent  
13 small business entrants, and established  
14 small business concerns awarded prime  
15 contracts or subcontracts during the fiscal  
16 year, including a breakdown of such enti-  
17 ties that are small business concerns  
18 owned and controlled by service-disabled  
19 veterans, qualified HUBZone small busi-  
20 ness concerns, small business concerns  
21 owned and controlled by socially and eco-  
22 nomically disadvantaged individuals, and  
23 small business concerns owned and con-  
24 trolled by women.

1           “(iii) DOLLAR DISTRIBUTION AMONG  
2           SMALL BUSINESS CONCERNS.—The total  
3           dollar value of prime contract awards for  
4           the top 20 small business concerns that re-  
5           ceived the most Federal procurement fund-  
6           ing in the fiscal year, compared to the  
7           combined total dollar value for the remain-  
8           ing small business concerns, and a com-  
9           parison of that data with the prior fiscal  
10          year.

11          “(iv) SMALL BUSINESS PARTICIPA-  
12          TION BY INDUSTRY.—The total dollar  
13          value of prime contract awards made to  
14          small business concerns in all industry sec-  
15          tors and sorted by highest dollar amount  
16          per major industry sector to the least, in-  
17          cluding—

18                 “(I) the number of individual  
19                 small business contractors awarded  
20                 contracts in each industry sector; and

21                 “(II) the top 10 industries in  
22                 which small business concerns, small  
23                 business concerns owned and con-  
24                 trolled by service-disabled veterans,  
25                 qualified HUBZone small business



1 concerns, small business concerns  
2 owned and controlled by socially and  
3 economically disadvantaged individ-  
4 uals, and small business concerns  
5 owned and controlled by women par-  
6 ticipate, compared to the 10 indus-  
7 tries in which those concerns have the  
8 least participation.”; and

9 (VI) in subparagraph (E), by  
10 striking “(E)” and inserting “(C)  
11 OTHER FACTORS.—”; and

12 (ii) in paragraph (3), by striking sub-  
13 paragraphs (A) and (B) and inserting the  
14 following:

15 “(A) not more than 40 percent of the score  
16 on the dollar value of prime contracts described  
17 in paragraph (2)(A), as determined by the Ad-  
18 ministrator;

19 “(B) not less than 30 percent of the score  
20 on the information provided in paragraph  
21 (2)(B), as determined by the Administrator;  
22 and

23 “(C) the appropriate percent of the score  
24 on the information provided in paragraph  
25 (2)(C), as determined by the Administrator.”.

1           (2) REGULATIONS.—Not later than 90 days  
2 after the date of enactment of this Act, the Adminis-  
3 trator of the Small Business Administration shall  
4 issue regulations to define the terms “new small  
5 business entrant”, “recent small business entrant”,  
6 and “established small business concern” for pur-  
7 poses of subparagraph (B)(ii) of section 15(y)(2) of  
8 the Small Business Act (15 U.S.C. 644(y)(2)), as  
9 added by paragraph (1).

10       (c) LIMITATION ON FEDERAL AGENCY CREDIT FOR  
11 MEETING CONTRACTING GOALS.—Section 15(g) of the  
12 Small Business Act (15 U.S.C. 644(g)), as amended by  
13 subsection (b), is amended by adding at the end the fol-  
14 lowing:

15           “(4) LIMITATION ON CREDIT FOR MEETING  
16 CONTRACTING GOALS.—

17           “(A) DEFINITIONS.—In this paragraph—

18           “(i) the term ‘covered category of  
19 small business concern’ means—

20           “(I) a small business concern  
21 owned and controlled by service-dis-  
22 abled veterans;

23           “(II) a qualified HUBZone small  
24 business concern;

1                   “(III) a small business concern  
2                   owned and controlled by socially and  
3                   economically disadvantaged individuals;  
4                   or

5                   “(IV) a small business concern  
6                   owned and controlled by women; and

7                   “(ii) the term ‘credit’ means the value  
8                   of a prime contract.

9                   “(B) GENERAL RULE.—A Federal agency  
10                  may allocate credit for a single prime contract  
11                  awarded to a small business concern not more  
12                  than 2 times for purposes of demonstrating  
13                  compliance with the goals of the Federal agency  
14                  established under paragraph (2)(A).

15                  “(C) ALLOCATION OF CREDIT.—

16                  “(i) FIRST ALLOCATION.—The first  
17                  allocation of credit described in subpara-  
18                  graph (B) shall be applied towards the  
19                  goal of the Federal agency established  
20                  under paragraph (2)(A) for participation  
21                  by small business concerns.

22                  “(ii) SECOND ALLOCATION.—A second  
23                  allocation of credit described in subpara-  
24                  graph (B) shall be applied as follows:

1           “(I) If the prime contract was  
2 awarded as a sole-source contract or  
3 through competition restricted to a  
4 covered category of small business  
5 concern, the credit shall be applied to-  
6 wards the goal of the Federal agency  
7 established under paragraph (2)(A)  
8 for participation by the applicable cov-  
9 ered category of small business con-  
10 cern.

11           “(II) If the prime contract was  
12 not awarded as a sole-source contract  
13 or through competition restricted to a  
14 covered category of small business  
15 concern, the credit may only be ap-  
16 plied towards a single goal of the Fed-  
17 eral agency established under para-  
18 graph (2)(A), determined at the elec-  
19 tion of the contracting officer, for par-  
20 ticipation by a covered category of  
21 small business concern that is applica-  
22 ble to the recipient of the prime con-  
23 tract, without regard to whether the  
24 recipient of the prime contract quali-

1                   fies as more than 1 covered category  
2                   of small business concern.”.

3           (d) TESTIMONY ON SMALL BUSINESS ENGAGEMENT  
4 BEFORE CONGRESS.—Section 15(g) of the Small Busi-  
5 ness Act (15 U.S.C. 644(g)), as amended by subsections  
6 (b) and (c), is amended—

7           (1) in paragraph (2)—

8                   (A) by striking “(2) (A) The head” and in-  
9                   serting the following:

10           “(2) AGENCY GOALS.—

11                   “(A) ESTABLISHMENT.—The head”;

12                   (B) by moving subparagraphs (B), (C),  
13                   and (D) 2 ems to the right;

14                   (C) in subparagraph (B), by inserting  
15                   “REQUIREMENTS FOR GOALS.—” before “Goals  
16                   established”;

17                   (D) in subparagraph (C), by inserting  
18                   “FAILURE TO AGREE ON GOALS.—” before  
19                   “Whenever”;

20                   (E) in subparagraph (D), by inserting  
21                   “PLAN FOR ACHIEVING GOALS.—” before  
22                   “After establishing”;

23                   (F) in subparagraph (E), by inserting  
24                   “CONSIDERATIONS FOR ACHIEVING GOALS.—”  
25                   before “The head”;

1 (G) in subparagraph (F)—

2 (i) by inserting “COMMUNICATION OF  
3 GOALS.—” after (F);

4 (ii) by striking “(i) Each” and insert-  
5 ing:

6 “(i) IN GENERAL.—Each”; and

7 (iii) by striking “(ii) A procurement”  
8 and inserting:

9 “(ii) PROCUREMENT EMPLOYEE OR  
10 PROGRAM MANAGER DEFINED.—A procure-  
11 ment”; and

12 (H) by adding at the end the following:

13 “(G) REMEDIATION.—Any Federal agency  
14 failing to receive a score equivalent to a letter  
15 grade of ‘A’ or above in a letter graded rating  
16 system, as established under subsection (y), in  
17 a fiscal year shall—

18 “(i) submit to the Committee on  
19 Small Business and Entrepreneurship of  
20 the Senate and the Committee on Small  
21 Business of the House of Representatives  
22 the report required under subsection  
23 (h)(1); and

24 “(ii) testify before the Committee on  
25 Small Business and Entrepreneurship of

1 the Senate and the Committee on Small  
2 Business of the House of Representatives  
3 on the reasons for failing to meet a letter  
4 grade of ‘A’ or above, and the details of  
5 the report submitted under clause (i), in  
6 particular the justifications and remedi-  
7 ation plan described in subparagraphs (C)  
8 and (D) of subsection (h)(1).”; and

9 (2) by striking “(3) First” and inserting the  
10 following:

11 “(3) DEPARTMENT OF ENERGY SUB-  
12 CONTRACTS.—First”.

13 (e) EVALUATION OF OFFERS FOR CONTRACTS IN-  
14 CLUDING SUBCONTRACTING PLANS.—Section 8(d)(4) of  
15 the Small Business Act (15 U.S.C. 637(d)(4)) is amend-  
16 ed—

17 (1) by moving subparagraph (G) 2 ems to the  
18 left; and

19 (2) in subparagraph (G)—

20 (A) in the matter preceding clause (i), by  
21 striking “bundled contract where the head of  
22 the agency determines that the contract offers  
23 a significant opportunity for subcontracting”  
24 and inserting “contract that includes a subcon-

1           tracting plan required under this paragraph or  
2           paragraph (5)”; and

3                   (B) in clause (i), by striking “the rate pro-  
4           vided under the subcontracting plan for small  
5           business participation” and inserting “a de-  
6           scription of the extent to which the offeror pro-  
7           poses to use small business concerns as sub-  
8           contractors at any tier”.

9           (f) RULE OF TWO ANALYSIS APPLIES BEFORE  
10          USING A MULTIPLE AWARD CONTRACT.—Section 15(r) of  
11          the Small Business Act (15 U.S.C. 644(r)) is amended—

12                   (1) by redesignating paragraphs (1) and (2) as  
13           subparagraphs (A) and (B), respectively, and adjust-  
14           ing the margins accordingly;

15                   (2) in the matter before subparagraph (A), as  
16           so redesignated, by striking “Not later than” and all  
17           that follows through “discretion—” and inserting  
18           the following:

19                           “(1) IN GENERAL.—Except as provided in para-  
20           graph (2), Federal agencies shall—”;

21                   (3) in paragraph (1)(A), as so redesignated, by  
22           adding “and” at the end;

23                   (4) in paragraph (1)(B), as so redesignated, by  
24           striking “; and” and inserting a period;

25                   (5) by striking paragraph (3); and



1 (6) by adding at the end the following:

2 “(2) EXCEPTIONS.—The requirements in para-  
3 graph (1) shall not apply—

4 “(A) in the case of contracts, including or-  
5 ders, awarded under subpart 8.4 of the Federal  
6 Acquisition Regulation (or any successor regu-  
7 lation); or

8 “(B) if the contracting officer is unable to  
9 obtain offers from 2 or more small business  
10 concerns that are—

11 “(i) competitive with market prices;  
12 and

13 “(ii) competitive with regard to the  
14 quality and delivery of the goods or serv-  
15 ices being purchased.

16 “(3) SMALL BUSINESS RESERVE.—Notwith-  
17 standing paragraphs (1) and (2), a Federal agency  
18 may reserve 1 or more contract awards for small  
19 business concerns under full and open multiple  
20 award procurements, including the subcategories of  
21 small business concerns identified in subsection  
22 (g)(2).”.

23 (g) ALIGNING OSDBU AND PCR COLLABORATION  
24 REGARDING BUNDLED OR CONSOLIDATED CONTRACTS.—

1 Section 15 of the Small Business Act (15 U.S.C. 644) is  
2 amended—

3 (1) in subsection (k)—

4 (A) in paragraph (5)—

5 (i) by inserting “or consolidation”  
6 after “bundling”;

7 (ii) by inserting “procurement center  
8 representative,” after “work with the”;

9 (iii) by inserting a comma after “ac-  
10 quisition officials”; and

11 (iv) by inserting “or consolidated”  
12 after “bundled”;

13 (B) in paragraph (8), in the matter pre-  
14 ceding subparagraph (A), by inserting “, as re-  
15 quired under subsection (l)(4)” after “procure-  
16 ment center representative,”; and

17 (C) in paragraph (17)—

18 (i) in subparagraph (B), by striking  
19 “and” at the end;

20 (ii) by redesignating subparagraph  
21 (C) as subparagraph (D); and

22 (iii) by inserting after subparagraph  
23 (B) the following:

24 “(C) inform the procurement center rep-  
25 resentative at such agency of the notice if the

1 notice pertains to contract bundling or consoli-  
2 dation and work with the procurement center  
3 representative and appropriate agency per-  
4 sonnel to increase the opportunity for competi-  
5 tion; and”); and

6 (2) in subsection (l)(2)—

7 (A) by moving subparagraph (A) 2 ems to  
8 the right;

9 (B) by redesignating subparagraphs (H),  
10 (I), (J), and (K) as subparagraphs (I), (J),  
11 (K), and (L), respectively;

12 (C) by inserting after subparagraph (G)  
13 the following:

14 “(H) consult with the Director of the Of-  
15 fice of Small and Disadvantaged Business Utili-  
16 zation of that agency and appropriate agency  
17 personnel with regard to—

18 “(i) proposed solicitations involving  
19 significant bundling or consolidation of  
20 contract requirements as described in sub-  
21 section (k)(5); and

22 “(ii) notices by small business con-  
23 cerns of undue restrictions on the ability of  
24 the small business concern to compete for  
25 the award due to significant bundling or

1 consolidation of contract requirements, as  
2 described in subsection (k)(17);” and  
3 (D) in subparagraph (K), as so redesign-  
4 nated, by adding “and” at the end.

○