

111TH CONGRESS
1ST SESSION

H. R. 2568

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. JOHNSON of Georgia (for himself, Mr. DOGGETT, Mr. GENE GREEN of Texas, Ms. CORRINE BROWN of Florida, Mr. CARDOZA, Ms. BORDALLO, Mr. FILNER, and Ms. ROS-LEHTINEN) 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

A BILL

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

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 “Fairness and Trans-
5 parency in Contracting Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

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

4 (2) the term “parent company”, relating to a
5 business concern, means a person other than an in-
6 dividual that owns not less than 51 percent of that
7 business concern;

8 (3) the terms “small business concern”, “small
9 business concern owned and controlled by veterans”,
10 “small business concern owned and controlled by
11 service-disabled veterans”, and “small business con-
12 cern owned and controlled by women” have the
13 meanings given those terms in section 3 of the Small
14 Business Act (15 U.S.C. 632), as amended by this
15 Act; and

16 (4) the term “small business concern owned
17 and controlled by socially and economically disadvan-
18 taged individuals” has the meaning given that term
19 in section 8(d)(3)(C) of the Small Business Act (15
20 U.S.C. 637(d)(3)(C)).

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to modify the definitions
23 relating to whether a business concern qualifies as a small
24 business concern, to establish additional requirements that
25 ensure that no publically traded business concern, sub-

1 subsidiary of a publically traded business concern, foreign-
2 owned business concern, or subsidiary of a foreign-owned
3 business concern is considered a small business concern
4 for the purpose of Federal Government contracting and
5 subcontracting, including for procurement goals.

6 **SEC. 4. DEFINITION OF SMALL BUSINESS CONCERN AND**
7 **STATUS REVIEW.**

8 Section 3(a) of the Small Business Act (15 U.S.C.
9 632(a)) is amended by adding at the end the following:

10 “(5) INDEPENDENTLY OWNED AND OPERATED.—

11 “(A) IN GENERAL.—In this subsection, the
12 term ‘independently owned and operated’ does not
13 include a business concern—

14 “(i) that is—

15 “(I) an issuer of a class of securities
16 registered or that is required to be reg-
17 istered pursuant to section 12 of the Secu-
18 rities Exchange Act of 1934 (15 U.S.C.
19 78l) or that is required to file reports pur-
20 suant to section 15(d) of that Act (15
21 U.S.C. 78o(d)); or

22 “(II) owned by an issuer of a class of
23 securities registered or that is required to
24 be registered pursuant to section 12 of the
25 Securities Exchange Act of 1934 (15

1 U.S.C. 781) or that is required to file re-
2 ports pursuant to section 15(d) of that Act
3 (15 U.S.C. 78o(d)); or

4 “(ii) more than 50 percent of which is
5 owned, directly or indirectly, by one or more in-
6 dividuals that are not United States citizens.

7 “(B) ENTITIES.—In determining ownership of
8 a business concern, any interest in the business con-
9 cern that is owned by a person that is not an indi-
10 vidual (including a corporation, partnership, estate
11 or trust) shall be considered owned proportionately
12 by or for the individuals that own that person.”.

13 **SEC. 5. NOTIFICATION.**

14 (a) IN GENERAL.—Not later than 6 months after the
15 date of enactment of this Act, the Administrator shall no-
16 tify the head of each Federal department or agency re-
17 garding this Act and the amendments made by this Act.

18 (b) TO CONTRACTORS.—Not later than 6 months
19 after receiving notice under subsection (a), the head of a
20 Federal department or agency shall notify any contractor
21 of that department or agency regarding this Act and the
22 amendments made by this Act.

23 **SEC. 6. REPORTING.**

24 (a) IN GENERAL.—Not later than 6 months after the
25 end of each fiscal year, the Administrator shall publish

1 a report regarding prime contracts with the Federal Gov-
2 ernment awarded to business concerns that were identified
3 as small business concerns for the purposes of achieving
4 the small business contracting goals of the Federal Gov-
5 ernment during the previous fiscal year.

6 (b) CONTENTS.—

7 (1) IN GENERAL.—Each report under sub-
8 section (a) shall, for the fiscal year before the year
9 in which that report is published, include—

10 (A) the name of each small business con-
11 cern, small business concern owned and con-
12 trolled by socially and economically disadvan-
13 taged individuals, small business concern owned
14 and controlled by women, small business con-
15 cern owned and controlled by veterans, and
16 small business concern owned and controlled by
17 service-disabled veterans that was awarded a
18 prime contract with the Federal Government;
19 and

20 (B) for each small business concern de-
21 scribed in subparagraph (A), the total dollar
22 amount of prime contracts with the Federal
23 Government awarded to that small business
24 concern in descending order.

1 (2) PARENT COMPANIES.—If a small business
2 concern described in paragraph (1)(A) has a parent
3 company, the Administrator shall report information
4 relating to any prime contract with the federal gov-
5 ernment of that small business concern und the
6 name of that parent company.

7 (c) AVAILABILITY.—The Administrator shall make
8 each report under subsection (a) available on the website
9 of the Administration in a manner that is easily accessible
10 by members of the public.

11 **SEC. 7. LIST OF CONTRACTORS.**

12 (a) IN GENERAL.—Each Federal department and
13 agency shall publish on the website of that department or
14 agency a list of each business concern that received a con-
15 tract award because that business concern was identified
16 as a small business concern.

17 (b) LIST CONTENTS.—A list published under sub-
18 section (a) shall—

19 (1) list business concerns in the order of the
20 total amount in dollars of contracts between the
21 Federal Government and that business concern, be-
22 ginning with the largest total value;

23 (2) include the total amount in dollars of con-
24 tracts between the Federal Government and each
25 business concern on such list; and

1 (3) include the name of any parent company of
2 a business concern on such list.

3 **SEC. 8. CONTRACTING DATABASES.**

4 The Administrator shall, by regulation, establish pro-
5 cedures to ensure that the Central Contractor Registration
6 database and any successor database provide an adequate
7 warning regarding criminal penalties established under
8 section 16(d) of the Small Business Act (15 U.S.C.
9 645(d)) for misrepresenting the status of a business con-
10 cern or person in order to obtain certain contracts with
11 the Federal Government.

12 **SEC. 9. ENFORCEMENT.**

13 (a) COMPLAINTS.—

14 (1) IN GENERAL.—Any person may file a com-
15 plaint with the Administrator and the head of the
16 affected department or agency about the classifica-
17 tion of a business concern as a small business con-
18 cern and the Administrator and the head of the af-
19 fected department or agency shall resolve any com-
20 plaint filed under this paragraph in a timely man-
21 ner.

22 (2) REPORTS.—The Administrator shall annu-
23 ally submit to Congress a report describing any com-
24 plaints described in paragraph (1) that were filed

1 during the relevant year and the resolution of any
2 such complaint.

3 (b) DEBARMENT.—The head of each Federal depart-
4 ment or agency shall issue or amend the contracting rules
5 and regulations for that department or agency to ensure
6 that a business concern shall be debarred from receiving
7 a Federal contract for a period of not less than 5 years
8 if that business concern—

9 (1) fraudulently represents that it is a small
10 business concern as part of a bid for a small busi-
11 ness contract with that department or agency; or

12 (2) violates this Act or an amendment made by
13 this Act.

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