AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 110–400

SMALL BUSINESS CONTRACTING PROGRAM IMPROVEMENTS ACT

OCTOBER 22, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 3867]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3867) to update and expand the procurement programs of the Small Business Administration, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

		Page
I.	Purpose of the Bill and Summary	2
II.	Background and Need for Legislation	3
III.	Hearings	11
IV.	Committee Consideration	14
V.	Committee Votes	14
VI.	Section-by-Section Analysis of H.R. 3867	17
VII.	Congressional Budget Office Cost Estimate	22
VIII.	Committee Estimate of Costs	24
IX.	Oversight Findings	24
X.	Statement of Constitutional Authority	24
XI.	Compliance With Public Law 104–4	25
XII.	Congressional Accountability Act	25
XIII.	Federal Advisory Committee Statement	25
XIV.	Statement of No Earmarks	25
XV.	Performance Goals and Objectives	25
XVI.	Changes in Existing Law Made by the Bill, as Reported	25

69–006

I. Purpose and Summary

The purpose of H.R. 3867, the Small Business Contracting Program Improvements Act (The Act) is to encourage participation by qualified small businesses, particularly veteran owned businesses, in the appropriate contracting programs offered under the supervision of the Small Business Administration. The Act amends key sections of the Small Business Act [1] to assist small business participation, prevent fraud and bring consistency to the operation of the main contract assistance programs.

The Small Business Administration was preceded by federal agencies developed during wartime to help small businesses adjust to and compete for federal contracts. The predecessors to the Small Business Administration (SBA) can be traced back to World War II and efforts to ensure that small businesses contributed to the maintenance of a robust defense industrial base. The foundation of the agency in government procurement is reflected in the Small Business Act's dictate that small business concerns receive a "fair proportion of the total purchases and contracts for the Government in each industry category * * * ." [2] Despite this clear mandate in existence for more than 50 years, small businesses in certain key groups, including those owned by service-disabled veterans, women entrepreneurs and certain socially disadvantaged businesses' owners have not received their fair share of federal government contracts. In addition, certain programs that are offered by the SBA have grown so complex and removed from SBA oversight that they have become susceptible to misuse to a significant degree, by unqualified businesses. Although there are many reasons for these failures, H.R. 3867 adopts a measured approach to addressing some of the underlying problems. The Committee intends to dramatically improve on the capability of small businesses to earn their fair share of federal government contracts within the letter and spirit of the Small Business Act's goals.

The bill rectifies significant contracting problems in two main areas: strengthening and modernizing these programs and setting standards to protect the integrity and consistency in the application of contract assistance programs so they will be used as Congress intended. Title I expands procurement opportunities for service-disabled veteran-owned businesses; a group that currently receives only a small fraction of their contracting goal. Further, it creates penalties for misrepresentation of a service-disabled veteran owned business classification and adopts a roadmap for providing information, advice and training to service-disabled veterans as prescribed by President.[3] Finally, contracting officers who under current law must set aside certain contracts for HUBZones, would now have discretion to award such contracts to be used for service-disable veteran-owned businesses. Title II provides that the Administrator perform the necessary checks on applicants for participation in the various contracting assistance programs to ensure their business integrity and qualifications. This is already required by most programs but this establishes uniformity in all of the small

[1] The Small Business Act, P.L. 85–536 (as amended), 15 U.S.C.§ 631 et. seq.
[2] § 15(a) of the Small Business Act 15 U.S.C. § 644(a).
[3] Executive Order 13360 regarding Service Disable Veterans, The White House, October 20, 2004.

business contracting programs. Title III sets out requirements for the SBA to implement the Women's Procurement Program immediately. Title IV strengthens the HUBZone program by verifying that small businesses receiving contracts under its authority are qualified. Finally Title V modernizes the 8(a) program to update and revise the qualification requirements, extend and realign the program term for participation and ensure that contracts issued under the authority of 8(a) go only to 8(a) qualified companies.

The Committee does not expect that these changes will alleviate all the problems associated with small business access to federal government contracts. Nevertheless, this bill eliminates some of the more egregious barriers to small business participation in a measured and balanced way. These barriers have been preventing some deserving businesses from achieving the goal of full participation and a fair share of federal contracts as set forth in the Small Business Act. This bill will help direct federal contracts to qualified small businesses furthering Congresses goals.

II. Background and Need for Legislation

In 2006, the federal government spent over $417 billion on goods and services in 8.3 million separate contracting actions. There is no reason to believe that the federal marketplace will not continue to grow at a record pace. Small businesses won approximately $80 billion in contracts which is about 21.5 percent of the remaining prime contracts. The opportunity for free and predominantly fair competition for those contracts is an immensely important benefit for small businesses.

Congress acknowledged the value of small business participation in federal contracting and has established federal policies to promote that objective for over 60 years. During World War II it was found to be in our national interest to ensure a strong and diverse industrial base. In Section 2 of the Small Business Act[4] procurement goals are established as follows: "it is the declared policy of the Congress that the Government should aid, counsel, assist and protect * * * the interests of small business concerns in order to preserve free competitive enterprise and to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government * * * be placed with small business enterprises." Without competition, industrial concentration occurs and the government's purchasing options are dramatically reduced.

Through a series of laws and procurement requirements Congress established a benchmark to give small businesses every opportunity to compete fairly for the award of federal contracts. The foundation for these efforts is the Small Business Act, passed in 1953, which has been steadily amended to adapt to meet the demands of the marketplace, to support important social and technological goals, and to conform to an increasingly sophisticated procurement system. Unfortunately, in recent years, as the number of contracts grew and competition for lucrative federal contracts intensified, the process became still more complex. To a certain extent, it has undermined the ability of small firms to compete for contracts.

[4] 15 U.S.C. § 631(a).

FEDERAL CONTRACTING AND BARRIERS FOR SMALL BUSINESS PARTICIPATION

Since 2000, the U.S. government's buying has expanded by nearly 60 percent. The federal-wide goal is currently 23 percent but SBA establishes individual agency goals that they then aggregate to obtain the overall 23 percent goal. In many cases, small businesses can handily fulfill the basic requirements of federal contracts and beat their competition; in fact, lower overhead, nimbler production and structural efficiencies often mean they can rise to provide services or products at the best price. While small firms often succeed in the private market, the structure of federal contracting creates institutional barriers that prevent smaller firms from participating. As such, competition is not always straightforward in the federal marketplace.

The primary public policy rationale for small business contracting programs is the positive economic benefits they provide, as well as assisting small businesses overcome the complexities of the system. The economic benefits of these programs can be seen in two primary areas—market competition and local economic development. First, programs that are designed to increase and diversify small contractors with the intent of expanding the federal supplier base. This leads to increased competition, which results in higher quality, greater product variety, and lower prices. Second, these contracting initiatives lower barriers to entry in a wide range of markets for small businesses. This provides greater market access for small firms' goods and services. From an economic perspective, such access is critical to generating positive macroeconomic benefits, including higher job creation, wage growth, and greater income distribution.

Of the government contracting dollars that are awarded through competition, nearly three-quarters are awarded through "full and open competition." Through this mechanism, small businesses compete directly with large corporations. Unfortunately, all but the most successful small firms are ill-equipped to go head-to-head with a much bigger company who can overcome the complexities of federal contracting.

As a result, the Small Business Act allows agencies to limit competition—or to "set aside" contracts for bidding only by small firms. Almost half of all contracting dollars awarded to small businesses use small business set-asides. If this mechanism did not exist, small firms, which account for 50% of our gross domestic product, would receive only 11 percent of all government contracting dollars.

While these programs have assisted many small firms, there is need for improvement. Even in those cases where the law requires that certain contracts be set aside for competition between capable small businesses, there are often barriers for smaller firms. In some cases, firms representing themselves as qualified to compete for a set-aside do not meet participation eligibility requirement. In other cases, a small bidder wins an award and turns it over to a much larger subcontractor or joint-venturer; in effect a backdoor award to a large bidder. This undermines the goal of these programs.

Most of the SBA's procurement initiatives are based on the theory that restricting competition to certain segments of the small

business community is acceptable as long as two or more firms are expected to bid on a particular contract. In the same way that small firms have difficulty competing directly against large businesses, certain sectors of small businesses have unique challenges in competing against their more successful counterparts. Using set-asides, each category of small firms bids for contracts against other similarly situated businesses.

Federal contracting assistance programs

The SBA is charged with administering a number of procurement initiatives targeting various sectors of the small business community. These programs have historically been effective in increasing the likelihood that small firms are able to obtain federal contracts.

Service Disabled Veteran Procurement Program

This initiative was created in 2003 to increase contracting opportunities for companies owned by service-disabled veterans, given that agencies were unable to accomplish the three percent procurement goal established as part of the Veterans Entrepreneurship and Small Business Development Act of 1999.[5] It was implemented within 6 months thereafter. Agencies are allowed to limit competition for a contract among service-disabled veteran-owned businesses. If there are not at least two qualified businesses to compete for the contract, an agency is able to enter into a contract with a service-disabled veteran-owned business without competition from other companies, thereby increasing the likelihood that these companies will access government contracts.

Despite these initiatives, small firms owned by service-disabled veterans (SDVBs) continue to lag well behind the 3 percent goal that was enacted in 1999. In large part, this is due to the limited authority agencies have to enter into sole source contracts with SDVBs. In fiscal year 2006, these businesses received less than 1 percent of federal government contracting dollars. SDVBs are the only business category which allows companies who falsely represent their status as SDVBs to avoid penalty. Finally, it is clear that the SBA has not fulfilled its obligations under Executive Order 13360 dated October 21, 2004 that orders all agencies to assist Service disabled veteran-owned small businesses in obtaining government contract and subcontract opportunities.

HUBZone program

This program's purpose is to provide community development for low-income and high unemployment areas through the award of federal contracting dollars to businesses that are located in these areas and employ local residents. The program allows federal contract preferences for firms that locate their primary business operations in a designated HUBZone. Further, 35 percent of the company's employees must reside in a HUBZone area. HUBZone companies must be certified as such by the SBA. HUBZone companies can get price credits; have competition limited to only HUBZone firms, and the availability of sole source contracts.

As the HUBZone program has matured, questions have been raised about whether the program is accomplishing its goals and

[5] As revised, in the Veteran's Benefits Act of 2003 PL 108–183, Section 308.

whether it has been subject to fraud and abuse. Two SBA Inspector General reports have uncovered problems with assuring that firms were properly certified in the program and have remained eligible for future awards. The first report found that SBA did not have the internal controls to guarantee that only certified firms participated.[6] The second report issued by the SBA IG found that 80 percent of the companies in the program were not eligible three years after they were approved.[7] Small business witnesses expressed concern about how this could happen, the impact this has on small business contracts and what SBA intends to do to rectify the problem.

Another concern about the program has been the parameters of a "low-income" area for the purposes of the HUBZone program designation. In an analysis of these areas, it appears the designation of HUBZone has been applied to some relatively affluent communities. Additionally, in a sampling by the Committee of 132 HUBZone contract awards, the Committee found that 4 of the contracts went to large companies, one contract was to a non-profit and 40 percent of the rest went to companies that had never been certified as a HUBZone company, as required under the statutes. The analysis revealed that federal agencies were not checking the accuracy of bidders claims to be HUBZone qualified to the detriment of deserving HUBZone participants. All these issues have led the Committee to take a stronger look at the rules surrounding HUBZones and the legislation reflects these concerns.

Women's Federal Procurement Program

This program was created to correct the imbalance in the number of women-owned businesses nationally when compared to their presence in the federal marketplace. The Women's Procurement Program was enacted as part of the Equity In Contracting For Women Act[8] in 2000 but it has yet to be implemented by the SBA. It was to allow for restricted competition for federal contracts by women-owned businesses in federal contract involving work within industry sectors needed by the federal government that have historically underutilized them.

The first requirement for this program was a study to determine what industries are underutilized by women-owned businesses. After a failed attempt to bring forth a meaningful study in 2001, and a court order directing SBA to get moving on implementing the program, the SBA entered into a contract in 2006 to complete the study and results were released in April 2007. The Rand Study[9] had mixed results. Briefly, they found that if the number of contracts awarded was the criteria, women-owned businesses looked under-represented in a number of categories; however, if the dollar

[6] Audit Report of the Eligibility of 15 HUBZone Companies and a Review of the HUBZone Empowerment Contracting Program's Internal Controls; Inspector General, Small Business Administration, Audit Report #3–05, January 22, 2003. The IG's report stated that "(w)e also found that the Office of HUBZone Empowerment's internal controls were inadequate to ensure that only eligible firms are certified and remain certified. Therefore, there is little assurance that the program will provide increased employment, investment and economic development for depressed areas. Since ineligible companies could receive HUBZone contracts, the program is also vulnerable to contracting fraud."

[7] HUBZone Program Examination and Recertification Processes; Inspector General, Small Business Administration Report #6–2—May 23, 2006.

[8] Equity in Contracting for Women Act, PL 106–554.

[9] The Utilization of Women-Owned Small Business in Federal Contracting; Rand Corporation, April 2007.

value of the contracts was used as a measure, the underutilization was less clear. Since that time, the SBA has promised to promulgate regulations to implement the program but no proposals have been forthcoming.

Both the House and Senate have called repeatedly for the SBA to move to implement the program anyway. Women business owners, whose representatives have gone to court numerous times to compel the SBA to move forward with the program, believe they have missed contracting opportunities worth billions of dollars. They testified that SBA's actions have thwarted the statutory procurement goal that five percent of contracting dollars go to women entrepreneurs which was established in 1994. They are concerned that the program passed by Congress for their benefit is being stalled to death.

8(a) program

This program is the primary way that minority-owned businesses enter the federal marketplace. Established in the late 1960s, the 8(a) program was designed to promote individual minority entrepreneurship through federal contracts awards. Its purpose was to expand economic opportunities for minority individuals and to correct imbalances in the number of minority individuals compared to the number of minority entrepreneurs. Throughout its history, the program has developed more than 20,000 companies that have received in excess of $100 billion in federal contracts.

Due to changes in federal procurement policy and agency neglect, there have been no significant updates to the 8(a) program since 1988. As a result, the program is seen by many federal agencies as an antiquated contracting option. Over the past six years, SBA has requested significant reductions in funding, staffing and technical assistance for participant businesses, which has resulted in the 8(a) program moving away from its goal of providing business development to minority entrepreneurs. Particularly out of date is the net worth limitation that prohibits owners of 8(a) companies from having a net worth of over $250,000. This nearly 20 year old ceiling severely inhibits the ability of the owner to raise capital or even purchase necessary equipment. Though it may seem adequate when contemplating the wealth of a private citizen, the fact is that business owners require more access to capital than others to be able to maintain and grow their businesses. Witnesses as well as SBA officials recognized that the net worth threshold had not been adjusted adequately to reflect the current dollar values of running a business.

Another concern has been the significant reduction in the proportion of eligible 8(a) companies that actually receive contracts. In FY 2006, only seven percent of companies that were participating in the 8(a) program during that year received a contract. This compares to thirty-one percent, seven years earlier. Contracts have also become exceedingly concentrated among the top contract recipients. In FY 2006, the top 10 companies (measured in terms of contract volume) received more than 40 percent of the contract dollars awarded to companies in the program. Compare that to FY 1999, when the top 10 recipients of 8(a) contract dollars received only 13 percent of the contract dollars.

Certain other problems were mentioned during the Committee's review of this important program. The 8(a) program is subject to a nine year time limit—divided between a five year developmental phase and a four year transitional phase. This has reinforced the focus of the program on transitioning companies out, rather than on the goal of business development. In 1995, a two-year moratorium was imposed on the ability of agencies to limit competition for contracts to only minority entrepreneurs, but was never lifted. This has resulted in minority entrepreneurs being the only segment of the small business community—comprised of women entrepreneurs, service-disabled veteran businesses, and small firms located in low income or high unemployment areas—without a limited competition option available to them. In December of 2004, legislation was enacted to allow companies that were approved into the 8(a) program—because of its rigorous application process—to be deemed eligible for other federally-funded programs for small disadvantaged businesses without having to reapply. To this date, the implementation of this provision has been inconsistent at best. All of these flaws, particularly in combination, have tended to make the 8(a) program far less effective than it once was.

General contracting assistance policy concerns

Size determination rules can exclude small businesses

SBA utilizes "size standards" to determine whether a business entity is small and thus, eligible for government programs and preferences reserved for "small business" concerns. In establishing size, SBA will determine if the business is affiliated with another company. SBA uses five balancing tests in determining if companies are affiliated.[10] SBA's regulations provide that restraints imposed on a franchisee relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining affiliation provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest. See 13 CFR 121.103 (i).

The *Garvin Enterprises* case, No. SIZ–4544 (April 4, 2003), involved a temporary employment agency operating under a franchise agreement, where the franchisor finances and processes the payroll of the temporary workers (not the employees of the franchisee) and invoices and collects customer accounts receivable in order to ensure payment to the temporary workers. In this case the SBA decided that the franchisee and franchisor are affiliated, thus disqualifying the independent franchisee from eligibility for small business programs. SBA also acknowledged in the case that "this type of arrangement is customary for many firms in the tem-

[10] The five factors historically considered for affiliation are (1) whether the franchise owner bears the entire risk of financial loss from its business operations; (2) the ability of the franchise owner to retain the majority of the profits from its business; (3) whether the franchise owner maintains day-to-day control over its operations; (4) whether the franchise owner must provide significant amounts of financing without any recourse for indebtedness repayment to the franchisor; and (5) whether any commonality in ownership or management exists between the franchise owner and the franchisor. See 13 C.F.R. 121.103.

porary employment industry * * *. This is a policy question, and thus beyond this Office's jurisdiction."

The temporary staffing industry has experienced problems with agencies not paying, or underpaying, those who they place as temporary workers. As a result, franchisors in the industry have adopted a practice of handling the administrative responsibilities and advancing the payment of salaries and withholding the taxes for temporary employees for franchisees.

Franchisees that satisfy all of the criteria that qualify them as independent small businesses should not be penalized simply because the franchisor has assumed responsibility for the administration and financing of the payroll and associated costs for the temporary employees to assure that the temporary employees are properly paid and that all withholding and other tax requirements are met.

H.R. 3867, Legislation addresses significant contract assistance problems

Most of the SBA's procurement programs have not been updated since their creation. For some initiatives, it has been nearly 20 years. During that time, the federal government has changed the way it buys, relegating many of these initiatives to second tier options for contracting officers. The Small Business Contracting Programs Improvements Act (H.R. 3867) addresses problems that have surfaced in these programs and modernizes provisions that are out of date.

H.R. 3867 removes the barriers that have prevented agencies from entering into contracts without competition to service-disabled veteran-owned small businesses, placing these businesses at the highest priority for small business contracting. It will also provide penalties if a company falsely represents itself as service-disabled veteran-owned. The measure directs SBA to implement and carry out certain obligations that were assigned to it by Executive Order 13360, codifying portions of that order into the Small Business Act. These responsibilities include providing information to service disabled veteran-owned businesses on contracting, advising agencies on how to expand procurements from service disabled veterans, and making assistance available to them on contract law and procedures. As a result of these provisions, the Committee expects to see an immediate and substantial increase in contracting opportunities for companies owned by service-disabled veterans.

Contracting fraud reduces the effectiveness of the SBA's contracting programs. It is important that bad actors are weeded out so that the programs can reach their intended beneficiaries. Participating in an SBA procurement program should be a privilege not a right. These contract assistance programs provide preferences over and above those received by other small businesses and are designed to level the playing field for a number of segments of the small business community that have historically been left behind. Given this, company owners should be of the highest integrity.

Unfortunately, the agency has not implemented safeguards for any of the contracting programs. This raises substantial concern that owners found to be ineligible because of character issues for one SBA program, could participate in others that do not have the same integrity restrictions. The bill ensures that prior to the award

of a contract, the agency will have verified business integrity of participants.

The Committee believes that the contract assistance programs should be operated consistently and predictably. As it is now, each program is administered inconsistently by the SBA. For example, some of the programs have goals, others do not. All of the initiatives should have both prime and subcontracting goals. Subcontracting can be an effective alternative for small companies seeking to participate in the $410 billion federal marketplace. The bill requires each SBA procurement program to have both a prime contracting and a subcontracting goal.

Three of the programs have a sole source contracting option. Each is subject to dollar limitations, above which, competition is required. However, the limitations which apply to all initiatives have not been modified since 1988 with the exception of a small increase in October of 2006. The legislation provides an inflationary adjustment to the sole source threshold to $5.1 million for contracts other than manufacturing for all SBA procurement programs. For manufacturing, the legislation comports the statute with the SBA's regulatory increase from October of 2006 to $5.5 million. Over this limit, contracts will require competition among each program's participants.

H.R. 3867 ensures the implementation of the women's procurement program. It sets forth parameters the SBA must use to evaluate the under-representation of women entrepreneurs in federal contracting. This provision will implement the program upon enactment and sets out how the SBA should run the program. Companies receiving contracts awarded through the women's procurement program will be subject to eligibility protests by other small businesses that would otherwise have been eligible to receive the contract but for the contract being awarded using this program.

The Act requires the SBA to perform on-site verifications of a HUBZone company's eligibility prior to the award of the company's second contract obtained with a HUBZone preference. This is designed to ensure that those HUBZones who are meeting the requirements of the programs will no longer have to compete with businesses fraudulently participating in the programs. The bill also limits the award of construction contracts with benefits provided by the program if the contract is more than 150 miles from the principal office HUBZone. Companies receiving contracts awarded through the HUBZone program will be subject to eligibility protests by other small businesses that would otherwise have been eligible to receive the contract but for the contract being awarded to a HUBZone program participant. This will maximize the intent of the program in achieving local economic development.

H.R. 3867 will modernize the 8(a) program in several ways. It will address the 8(a) net worth limitation raising it to $550,000 and raise the personal net worth provisions once a small business is in the program allowing for growth. This is an inflationary adjustment to update the program to meet current business operations. It will also encourage growth among these businesses. It will also add one year to the 8(a) program time, and divide the program into a six year developmental phase and a four year transitional phase. This program also allows for small businesses concerns who are not

8(a) participants to protest section 8(a) awards. This integrity measure will further the goal of eliminating fraud and abuse.

The problem of the treatment of franchises in the temporary employee industry is resolved by recognizing that the industry practice of franchisors financing the payroll of the temporary workers which protects the temporary workers from being underpaid. The Committee believes that such industry practice should not be given any probative weight in applying the traditional affiliation factors for business size determinations.

H.R. 3867, the Small Business Contracting Program Improvements Act continues the Committee's work on reauthorizing programs administered by the U.S. Small Business Administration. The Act takes several steps to modify and update the SBA's procurement programs and to reduce contracting fraud. Tens of thousands of small firms rely on these programs to provide entrée to the federal marketplace. Given that each of the contract assistance programs is currently experiencing higher rates of participation than ever, it is crucial that these initiatives are structured to provide these companies with the maximum opportunity to receive benefits.

III. Hearings

During the 110th Congress the Committee has held a number of hearings which touched on various aspects of the SBA's contracting assistance programs and three hearings to address this subject directly.

On March 21, 2007 the Subcommittee on Contracting and Technology held a hearing on the Implementation of the Women's Procurement Program and Federal Government Efforts in Contracting with Women-Owned Businesses. The first panel of federal agency witnesses included the Honorable Jovita Carranza, the Deputy Administrator for the Small Business Administration; Dr. Frank Spampinato, Chief Acquisition Officer for the Department of Energy; Mr. Larry Warder, Chief Financial Officer for the Department of Education; and, Thomas Luedtke, Assistant Administrator for Procurement at the National Aeronautic and Space Administration. All reviewed the status of their agencies efforts to meet their goals with regard to contracting with women-owned businesses and individual successes within their programs. They went over their reports and data related to their accomplishments and their plans to support and include women-owned businesses in contract efforts in the future. Under questioning, Deputy Carranza went through the current status of the implementation of the Women's Procurement Program. The report had been completed and regulations were being prepared. Other agency representatives explained why they had fallen short of their women-owned business contracting goals.

During the second panel on March 21, 2007, Ms. Margot Dorfman the CEO of the U.S. Women's Chamber of Commerce reviewed the history of women-owned business "goaling" and the Women's Federal Procurement Program. Her group had filed suit in federal court to force SBA to implement the program and prevailed with the Court declaring that the SBA "had sabotaged, whether intentional or not, the implementation of a procurement program * * *." She testified that Congress should step in and demand the immediate implementation of the program and that each

year of delay costs women-owned businesses billions of dollars in contract award opportunities. Ms. Christina Lomasney, the President and CEO of Isotron Corporation, explained that her company performs research for the federal government under a contract with the Department of Defense. Isotron has performed well and other women-owned businesses could perform well if they were more fully utilized. She urged more programs that could benefit women-owned high tech businesses such as SBIR, Mentor-Protégé and the implementation of the Women's Federal Procurement Program. The next witness, Ms. Karyl Smith of Iowa Valley Appraisal has done work with the U.S. Department of Agriculture but believes there are many other federal agencies that should be trying harder to use women-owned businesses like hers. Federal Emergency Management Agency, Homeland Security and Housing and the Department of Housing and Urban Development all have massive appraisal duties and are all not meeting their goals. The final business owner to testify was Ms. Sheryl Mendenhall-Roberts, CEO of CCS Holdings, a company that is a third party administrator for worker's compensation claims and risk management services. They are capable of saving the country millions in unnecessary and mistaken payments of claims that could be negotiated or eliminated with some professional review. She believes small business programs, including the Women's Federal Procurement Program would force agencies to look harder for these kinds of money saving services that are well-used in the private sector.

On September 19, 2007 the Committee on Small Business held a hearing on The Effectiveness of the SBA's Contracting Programs and the Challenges They Face. The Honorable Jovita Carranza, the Deputy Administrator of the SBA reviewed the administration's plans for the future of these programs as well as facts and data on the program's accomplishments. SBA indicated they supported the programs but acknowledged some difficulty in ensuring that the programs were delivered to appropriate parties, a problem that had been reported from a number of sources including the General Accountability Office and the SBA Inspector General. Also, she was unable to specify a date when the Women's Procurement Program would finally be implemented now seven years after passage. The Deputy pointed out that they were working on regulations. This program allows contracting officers to steer contracts to women business owners in industry sectors where they were being underutilized in federal contracts.

The non-government witnesses appearing at the September 19, 2007 hearing included Mr. Harry Alford on behalf of the National Black Chamber of Commerce who testified strongly in favor of modernizing the 8(a) program, updating its net-worth provisions and extending the term. Mr. Ronald F. Chamrin appeared for the American Legion and urged the committee to take action to increase the participation in contract assistance programs by service-disabled, veteran owned firms. Ms. Margot Dorfman, of the U.S. Women's Chamber of Commerce addressed the administration's failure thus far, after seven years and in spite of specific orders from the U.S. District Court, to implement the Women's Procurement program. She urged Congress to act to make sure such delays did not continue. Mr. Ron Newlan speaking for the HUBZone Contractors National Council pointed out the success of the HUBZone

in providing contracts and employment in low income HUBZone areas when it was used appropriately. His concern was that the program had been poorly implemented and underutilized by federal contracting agencies which resulted in lost opportunities for businesses and low-income communities. He asked the Committee to remind federal agencies to use the HUBZones more and acknowledged that fraud should not be allowed in the program. Mr. P.J. Goel, President, Goel Services, Inc., Washington, D.C. testified on behalf of the Associated General Contractors and pointed out that SBA and the participating federal agencies no longer have the funds for proper oversight and management of contracting assistance programs. AGC would like to see some of the programs consolidated and their requirements be consistent. Finally Dr. Trevor Brown, Assistant Professor, John Glenn School of Public Affairs, The Ohio State University felt that government contracting was becoming burdensome and unwieldy. He was concerned that the Congress not lose focus of the ultimate goal to purchase goods and services at the lowest possible price. Any new legislation should search for ways to achieve Congress's goals with the least imposition on federal agencies trying to do their job. Complexity, in his view, has become the biggest barrier to small business participation in contract assistance programs.

On October 4, 2007 the full Committee held a legislative hearing on the Committee draft of the Small Business Contracting Programs Improvement Act which had been circulated for discussion. The hearing was attended by the Honorable Steven Preston, the Administrator for the Small Business Administration. Mr. Preston expressed the Administration's concerns over a number of portions of the bill. He pointed out that SBA was introducing in the near future a regulation that would reduce fraud in the HUBZone program by requiring strong review of HUBZone status recipients. They also oppose on-site inspections of HUBZone recipients because of costs and logistics. Likewise SBA believes the 150 mile construction limit for a HUBzone company is overly restrictive. SBA is trying to improve the processes that eliminate backlogs that exist in the 8(a) program. The agency says it plans to hold other participating agencies accountable to meeting SBA regulations on 8(a) contracts. SBA does not see that the $250,000 net worth requirement has been a barrier to entry to the 8(a) program. Also testifying was Mr. Joseph Sharpe on behalf of the American Legion who supported the legislation to establish a firm set-aside for service-disabled veteran-owned businesses and veteran-owned businesses. He also requested that more help be given to those groups and suggested that the Committee move to codify the Executive Order 13360. They would ultimately like to see the program for service-disabled veteran-owned businesses have parity with the 8(a) preferences.

On a follow-up panel of small business organizations, Ms. Margot Dorfman representing the U.S. Women's Chamber of Commerce supported the quick implementation of the Women's Procurement Program and the increased attention to the utilization of the 8(a) program. Ms. Dorfman also wanted action taken to ensure integrity of the participants in the contract assistance programs to ensure that all businesses that won awards were qualified and worthy of performing contracts for the government. Finally she asked that

the Committee keep in mind the current technical difficulty and cost in bidding and participating in federal contracting. Mr. Todd McCracken, the Executive Director of the National Small Business Association, urged stronger enforcement against fraud and more attention to the complexity in participating in small business programs. NSBA feels that both are significant barriers to full small business participation. Mr. Steven Denlinger, U.S. Hispanic Chamber of Commerce, discussed the problems that have arisen since the SBA delegated their authority in contracting under the 8(a) program in 1993. He also pointed out that anything that slows the 8(a) contracting process will divert contracting officers away from the program and thus takes contracts away from small and disadvantaged businesses. The Hispanic Chamber asks the Committee to consider this if it adds requirements to the programs that are to be done by either small businesses or contract officers. He also felt that special incentives in the program that benefit Alaska Native Corporation contracts were hurting the 8(a) program. Finally Ms. Angela Styles of the law firm of Crowell & Moring, but also a former director of the Office of Federal Procurement Policy of the Office of Management and Budget, felt that part of the problems with fraud were caused by the complexity of the system. It is hard to comply with and hard to check. The Committee should consider things that make the systems easier for small businesses, not harder. She shared the view that complexity in itself is a significant barrier to entry for some businesses who might otherwise be successful contractors.

IV. Committee Consideration

The Committee on Small Business met in open session on October 18, 2007 to consider H.R. 3867 and any amendments.

V. Committee Votes

The bill, H.R. 3867, the Small Business Contracting Program Improvement Act was marked up by the Committee on Small Business on October 18, 2007 at 10 a.m. An amendment was offered by Representative Akin to strike Section 501 but was withdrawn by unanimous consent. An amendment was offered by Mr. Bartlett to strike Section 101(b) but it was defeated on a rollcall vote of 8 yea and 16 nay at 11:15 a.m. An amendment was offered by Mr. Bartlett to strike Section 201 but the amendment was withdrawn by unanimous consent. An amendment was offered by Mr. Bartlett to strike Section 502 but was withdrawn by unanimous consent. No further amendments were offered. The Committee on Small Business adopted and ordered H.R. 3867 reported to the House of Representatives by a recorded vote of 21 yeas and 4 nays at 11:27 a.m.

Committee on Small Business
110th Congress –First Session
Recorded Vote Sheet

Full Committee Markup

VOTE ROSTER FOR H.R. 3867
Amendment No. 035
Bartlett Amendment

October 18, 2007
10:00 a.m.
Room 2360 RHOB

Yea	Nay	
___	X	Nydia Velázquez (NY)
___	X	Heath Shuler (NC)
___	X	Charles Gonzalez (TX)
___	X	Rick Larsen (WA)
___	X	Raúl Grijalva (AZ)
___	___	Michael Michaud (ME)
___	X	Melissa Bean (IL)
___	X	Henry Cuellar (TX)
___	X	Daniel Lipinski (IL)
___	X	Gwen Moore (WI)
___	X	Jason Altmire (PA)
___	X	Bruce Braley (IA)
___	X	Yvette Clarke (NY)
___	X	Brad Ellsworth (IN)
___	X	Henry Johnson (GA)
___	X	Joe Sestak (PA)
___	X	Mazie Hirono (HI)
___	___	Brian Higgins (NY)

Yea	Nay	
X	___	Steve Chabot (OH)
X	___	Roscoe Bartlett (MD)
X	___	Sam Graves (MO)
___	___	Todd W. Akin (MO)
___	___	Bill Shuster (PA)
X	___	Marilyn Musgrave (CO)
___	___	Steve King (IA)
___	___	Jeff Fortenberry (NE)
___	___	Lynn Westmoreland (GA)
___	___	Louie Gohmert (TX)
___	___	Dean Heller (NV)
X	___	David Davis (TN)
X	___	Mary Fallin (OK)
X	___	Vern Buchanan (FL)
X	___	Jim Jordan (OH)

Total: Yeas ___8_____

Nays ___16_____

Committee on Small Business
110th Congress –First Session
Recorded Vote Sheet

Full Committee Markup

VOTE ROSTER FOR H.R. 3867

FINAL PASSAGE

October 18, 2007
10:00 a.m.
Room 2360 RHOB

Yea	Nay	
X		Nydia Velázquez (NY)
X		Heath Shuler (NC)
X		Charles Gonzalez (TX)
X		Rick Larsen (WA)
X		Raúl Grijalva (AZ)
		Michael Michaud (ME)
X		Melissa Bean (IL)
X		Henry Cuellar (TX)
X		Daniel Lipinski (IL)
X		Gwen Moore (WI)
X		Jason Altmire (PA)
X		Bruce Braley (IA)
X		Yvette Clarke (NY)
X		Brad Ellsworth (IN)
X		Henry Johnson (GA)
X		Joe Sestak (PA)
X		Mazie Hirono (HI)
X		Brian Higgins (NY)

Yea	Nay	
	X	Steve Chabot (OH)
	X	Roscoe Bartlett (MD)
X		Sam Graves (MO)
		Todd W. Akin (MO)
		Bill Shuster (PA)
	X	Marilyn Musgrave (CO)
		Steve King (IA)
		Jeff Fortenberry (NE)
		Lynn Westmoreland (GA)
		Louie Gohmert (TX)
		Dean Heller (NV)
X		David Davis (TN)
X		Mary Fallin (OK)
X		Vern Buchanan (FL)
	X	Jim Jordan (OH)

Total: Yeas 21

Nays 4

VI. Section-by-Section Analysis of the Small Business Contracting Programs Improvement Act—H.R. 3867

Title I. Ensuring Government Contract Opportunities for Small Businesses Owned and Controlled by Service-Disabled Veterans

Section 101. Expanding procurement opportunities

This provision will require agencies to enter into contracts with service-disabled veteran-owned companies without first requiring that agencies ensure that only one company can perform a contract. The provision also ensures that the procurement program for service-disabled veteran-owned small businesses has parity with the 8(a) program. The provision gives discretion to contracting officers whether or not to set aside contracts where two HUBZones qualified companies could compete for the contract. This is intended to open up more contracts for service-disabled, veteran-owned companies that are qualified to perform the contract. This section will provide an immediate, substantial and measurable increase in both the number and dollar amount of contracts awarded to companies owned and controlled by service-disabled veterans.

Section 102. Penalties for misrepresentation

This section provides for the assessment of civil penalties against any company that falsely represents itself as a service-disabled veteran-owned company for the purpose of obtaining federal contracts. The Committee believes that the SBA must ensure that businesses that misrepresent their status as small, small disadvantaged, women-owned, 8(a), or service-disabled veteran-owned are held accountable for these false statements. This protects certified participants in the programs from having to compete against businesses unfairly being awarded contracts. In particular, the Committee believes that false representation in the Central Contractor Registry (CCR) fulfills the requirement in Section 16(d) that a company is misrepresenting its status in order to obtain a prime contract.

Section 103. Implementation of Executive Order 13360

This provision requires the SBA to comply with the requirements set forth in the President's Executive Order 13360 dated October 20, 2004. Under this Order, the Administrator of the SBA is required to designate an appropriate entity within the SBA to provide service-disabled veteran-owned companies (SDVBs) with information and assistance concerning participation in federal contracting; advise and assist other agencies in their strategies to expand procurement opportunities for SDVBs; and make training assistance on federal contract law, procedures and practices available to SDVBs.

Title 2. Protecting Taxpayers and Ensuring Program Consistency

Section 201. Requiring business integrity of small business concerns

This provision prevents a company from receiving benefits under these contracting programs if the business owner has been shown not to have integrity. This codifies that SBA shall have a greater role in ensuring this integrity. If an applicant is found to lack character, the application shall be rejected.

If a business is found to lack character as a result of these investigations, the Committee intends that the SBA make proper notification to agencies awarding contracts. The Committee further intends that investigations regarding business integrity under this section shall be conducted in the same manner as indicated in SOP 80 05 3 or successor agency procedures.

Improving the integrity of these contracting programs serves the interest of program participants. It eliminates those businesses that are unfairly participating in the programs at a minimal cost to those businesses properly in the program.

Section 202. Establishment of goals

This provision ensures that each agency is subject to a goal for contracting with small firms participating in all of SBA's contracting programs. The Committee intends that the goal for companies participating in the 8(a) program shall be, at a minimum, 70 percent of the separate goal for small disadvantaged businesses.

Section 203. Small business concern subcontracting policy

This section sets forth the policy that while prime contracts awarded by an agency to a small business are important, it is equally important for small firms in SBA's procurement programs to participate as subcontractors on large projects.

Section 204. Increased size of available contracts

This provision provides an inflationary adjustment to the limitation on contracts—other than for manufacturing—awarded without competition to $5.1 million. Over this amount, competition will be required. The section also comports the statutory limitation for manufacturing contracts of $5.5 million to the existing SBA regulation.

Title 3. Expanding opportunities for women entrepreneurs

Section 301. Implement the women's procurement program

This provision will allow agencies to limit competition for federal contracts only to women business owners, in industries that have been closed to them. It also provides parameters for requiring the SBA to evaluate industry under-representation to ensure that the program will be implemented upon the legislation's enactment. In order to be eligible for restricted competition contracts, women entrepreneurs must be economically disadvantaged. The Administrator will have the authority to waive this requirement in industries that are substantially under-represented by women-owned businesses. This section also allows small businesses who would otherwise be able to receive a contract but for the fact that the contract was placed in the Women's Procurement Program, to protest the eligibility of a particular company as woman-owned.

The Committee intends that the following industries be deemed as under-represented by women-owned businesses for the purpose of this section. The Committee does not intend any further finding by an agency or department head that the agency has overtly or inadvertently discriminated against women entrepreneurs. Rather, the Committee intends that, upon enactment, agencies act imme-

diately at their discretion to enter into contracts with women-owned businesses in these industries.

2-Digit (NAICS) Code	Industry
11	Forestry.
21	Mining.
22	Utilities.
23	Construction.
31	Manufacturing.
32	Manufacturing.
33	Manufacturing.
42	Wholesale Trade.
44	Retail Trade.
45	Retail Trade.
48	Transportation.
49	Transportation.
51	Information.
52	Finance and Insurance.
53	Real Estate and Rental and Leasing.
54	Professional, Scientific and Technical Services.
56	Administrative and Support, Waste Management and Remediation Services.
61	Educational Services.
62	Health Care and Social Assistance.
71	Arts, Entertainment and Recreation.
72	Accommodation and Food Services.
81	Other Services.

Title 4. Strengthening Community Development

Section 401. On-site verification

This section will require an on-site inspection by the SBA of HUBZone-approved companies prior to the award of their second contract obtained with a HUBZone contracting preference. It also requires the SBA, within 90 days of enactment, to develop procedures to ensure that HUBZone companies notify the SBA prior to their award of a HUBZone contract subject to an inspection. The SBA will have 30 days to review the eligibility of the company for the award. If the company is found not to be eligible, the contract will be terminated. This section does not require multiple on-site inspections of a company, nor does it require a review prior to every HUBZone contract award. This provision will address the long-standing concerns of fraud in the HUBZone program expressed by the SBA's Inspector General.

The Committee intends that the SBA conduct an investigation of the principal office of a HUBZone small business concern prior to the award of the second contract received by that concern as a direct result of an award under Section 31 of the Act. If a company has previously received a contract award prior to enactment of this language, the Committee intends that the next contract received after enactment is treated as the second contract for the purpose of this section. The Committee further intends that this section does not require multiple on-site inspections of a company, nor does it require a review prior to every HUBZone contract award. The Committee intends that the Administrator act expeditiously to develop standards through which HUBZone small business concerns can notify the Administrator of pending awards. The Committee also intends that on-site investigations occur within 30 days of the award of a contract under section 31 of the Small Business Act. If a company is found not to be eligible as a HUBZone small business

concern, the Committee intends that the contract is terminated and that the company is assessed penalties under section 16(d) of the Small Business Act. The Committee intends that the Administrator place a high priority on ensuring this provision is administered as intended.

Section 402. Limitation on construction contracts

This section will limit the award of construction contracts with the HUBZone preference if the work will be performed in excess of 150 miles of the primary office location of the HUBZone-approved company. This will ensure that HUBZone benefits are provided to the local economy.

Section 403. Allowing small business concerns that are not HUBZone program participants to protest HUBZone awards

This provision allows small businesses who would otherwise have been able to receive a contract but for the fact that the contract was placed in the HUBZone program, to protest the eligibility of a particular HUBZone company to receive the award.

The Committee intends this provision to allow small business concerns in similar industries to be able to protest to the SBA the eligibility of a company to receive a contract under section 31 of the Small Business Act. The Committee does not intend this provision to allow small business concerns to protest the discretion or authority of an agency to enter into contracts under the authority provided by Section 31 of the Act.

Title 5. Modernizing the 8(a) Program

Section 501. Modernizing the section 8(a) program net worth limitations

This section provides for an inflationary adjustment in the net worth limitations to 8(a) program participants. At the time of program entry a company owner will be required to have a personal net worth less than $550,000—subtracting equity in the owner's primary residence and in their business. Once a company has been approved into the program, the net worth limitation will no longer apply. The Committee intends that this provision modify not only the net worth limitations in place for the SBA's 8(a) program, but also for programs that rely on this definition including the SBA's Small Disadvantaged Business certification program and the Department of Transportation's Disadvantaged Business Enterprise program. The Committee also intends that the $550,000 personal net worth limitation only apply to the 8(a) program and not to any program that already has a personal net worth limitation that exceeds $550,000.

The Committee also intends that the current personal net worth ceiling for the 8(a) program be lifted once a company is approved into the 8(a) program. The Committee further intends that personal net worth ceilings in place for the SBA's Small Disadvantaged Business certification program and the Department of Transportation's Disadvantaged Business Enterprise program are lifted once a company is approved into these programs. These changes will promote growth and expansion for program participants. It removes the current disincentive to expand.

Section 502. Extension of the section 8(a) program term

The provision extends the amount of time a company may participate in the 8(a) program term by one year. This adjustment was made to reflect the current trend that shows small businesses are not able to participate in the first few years they enter the program. The program will also be divided into a 6–year developmental phase and a 4 year transitional phase.

Section 503. Report on implementation

This provision will require the SBA to annually report to Congress on progress towards implementing Section 155 of Division K of P.L. 108–447. This section allows participants in the SBA's 8(a) program eligibility for other federally funded programs for small disadvantaged businesses without having to reapply.

Section 504. Allowing small business concerns that are not section 8(a) program participants to protest section 8(a) awards

This provision allows small businesses who would otherwise have been able to receive a contract but for the fact that the contract was placed in the 8(a) program, to protest the eligibility of a particular 8(a) company to receive the award.

The Committee intends this provision to allow small business concerns in similar industries to be able to protest to the SBA the eligibility of a company to receive a contract under Section 8(a) of the Small Business Act. The Committee does not intend this provision to allow small business concerns to protest the discretion or authority of an agency to enter into contracts under the authority provided by Section 8(a) of the Act. This provision is designed to further the integrity of the 8(a) program.

Title 6. Other Matters

Section 601. Affiliation for certain franchises

Section 601 of the bill provides that in determining whether a franchisee is affiliated with a franchiser in the temporary employee services industry, the SBA will not consider whether or not the franchisor finances the payroll of the temporary staffing personnel (including billing, collecting, and remitting client fees), nor the tax status of the temporary staffing personnel. The Committee intends that the SBA continue to apply its historically-considered affiliation factors in determining whether a business is affiliated with another business or the franchisor in the temporary staffing industry. However, the Committee acknowledges the industry practice of franchisors financing the payroll of the temporary workers which protects the temporary workers from being underpaid. The Committee believes that such industry practice should not be given any probative weight in applying the traditional affiliation factors.

VII. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 22, 2007.

Hon. Nydia M. Velázquez,
Chairwoman, Committee on Small Business,
House of Representatives, Washington, DC.

Dear Madam Chairwoman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3867, the Small Business Contracting Program Improvements Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

H.R. 3867—Small Business Contracting Program Improvements Act

Summary: H.R. 3867 would make several changes to programs administered by the Small Business Administration (SBA) that help small businesses compete for government contracts. The bill would expand contracting opportunities for certain veterans and increase the size limits on federal contracts that would be eligible for small business preferences.

In addition, H.R. 3867 would require background checks for participants in several contracting-preference programs, require SBA personnel to visit contractors participating in its HUBZone program, and expand the population of businesses that can protest the award to certain contracts. The bill also would impose penalties on small businesses that misrepresent the owner's status as a veteran disabled through military service.

Based on information from SBA, CBO estimates that implementing H.R. 3867 would cost $11 million in 2008 and $72 million over the 2008–2012 period, subject to the availability of appropriated funds. Enacting H.R. 3867 would increase civil penalties and thus could affect revenues, but CBO estimates that such effects would not be significant. Enacting the bill would not affect direct spending.

H.R. 3867 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3867 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—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Background Checks:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Study on Representation of Women:					
Estimated Authorization Level	0	0	0	0	1
Estimated Outlays	0	0	0	0	1

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
On-Site Verification:					
Estimated Authorization Level	13	13	13	14	14
Estimated Outlays	10	12	13	13	14
Award Protests:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	0	1	1	1	1
Total:					
Estimated Authorization Level	15	15	15	16	17
Estimated Outlays	11	14	15	15	17

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in fiscal year 2008 and that the necessary funds would be appropriated in that and each subsequent fiscal year.

Spending subject to appropriation

Under current law, SBA's 8(a) program offers business development and technical assistance as well as small business preferences for federal contracting and procurement. The HUBZone program provides federal contracting and procurement preferences to small businesses operating in historically underutilized business zones (HUB zones). H.R. 3867 would make changes to those programs as well as others that assist small businesses in competing for contracts with federal agencies. Subject to appropriation of the necessary amounts, CBO estimates that implementing H.R. 3867 would cost $11 million in 2008 and $72 million over the 2008–2012 period.

Background Checks. Section 201 of the bill would require SBA to perform background checks on owners of small businesses who apply to the 8(a) program and on participants in the HUBZone program that would be entering into a second federal contract. Based on information from SBA, CBO estimates that about 300 8(a) applicants and about 1,300 HUBZone applicants would be subject to this provision each year. The bill also would require SBA to perform background checks on a random sample of small-business owners participating in contracting-preference programs who are women or veterans disabled in military service. CBO estimates that implementing this provision would cost about $1 million in 2008 and $5 million over the 2008–2012 period, subject to appropriation of the necessary amounts.

Study on Representation of Women in Federal Contracting. Section 301 would require SBA to conduct a study every five years to identify industries in which women-owned small businesses are under-represented in federal contracting. Based on information from SBA, CBO estimates that implementing this provision would cost $1 million over the 2008–2012 period.

On-Site Verification. Section 401 would require SBA to perform an on-site inspection to determine whether a HUBZone participant is, in fact, qualified to participate in the program. Such inspections would occur only when a HUBZone participant notifies SBA that it is to be awarded a second contract under the program. Based on information from SBA, CBO estimates that approximately 5,000 on-site visits would be performed each year. Subject to appropriation of the necessary amounts, CBO estimates that implementing

this provision would cost about $10 million in 2008 and $62 million over the 2008–2012 period.

Award Protests. The bill would expand the parties eligible to protest the award of government contracts to participants in the 8(a) and HUBZone programs as well as programs that give preference to small businesses owned by women. Under current law, only parties with a direct stake in the outcome of the protest are eligible to lodge a protest. The bill would allow any small business to challenge the eligibility of a program participant to receive a contract award. Based on information from SBA, CBO expects that SBA would need four additional full-time equivalent investigators to handle the additional protests. We estimate that implementing this provision would cost $4 million over the 2008–2012 period.

Revenues

Section 102 could result in the collection of additional civil penalties, which are recorded on the budget as revenues, from small businesses that misrepresent the owner's status as a veteran disabled through military service. CBO estimates that any additional revenues would not be significant because of the relatively small number of cases likely to be affected.

Intergovernmental and private-sector impact: H.R. 3867 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: MarDestinee Perez.

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

VIII. Committee Estimate of Costs

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1867. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

IX. Oversight Findings

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3867 are incorporated into the descriptive portions of this report.

X. Statement of Constitutional Authority

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

XI. Compliance With Public Law 104–4

H.R. 3867 contains no unfunded mandates.

XII. Congressional Accountability Act

H.R. 3867 does not relate to the terms and conditions of employment or access to public services or accommodations with the meaning of section 102(b)(3) of P.L. 104–1.

XIII. Federal Advisory Committee Statement

H.R. 3867 does not establish or authorize the establishment of any new advisory committees.

XIV. Statement of No Earmarks

Pursuant to clause 9 of Rule XXI, H.R. 3867 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

XV. Performance Goals and Objectives

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

H.R. 3867 includes a number of provisions designed to update and to improve the Small Business Administration's contracting assistance programs including the Disabled Veterans Contracting Program, the HUBZone Program, the Women's Procurement Program, and the 8(a) program.

XVI. 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. 3. (a)(1) * * *

* * * * * * *

(5) Special rule relating to franchises in the temporary employee services industry.—In determining whether a franchisee is affiliated with a franchisor in the temporary employee services industry, the Administrator shall—

(A) disregard—

(i) whether the franchisor finances the payroll of the temporary staffing personnel (including billing, collecting, and remitting client fees); and

(ii) whether the temporary staffing personnel are treated as employees or independent contractors of the franchisor for tax or other purposes; and

(B) consider the processing of payroll and billing by a franchisor as customary and common practice in the temporary employee services industry that does not provide probative weight.

* * * * * * *

SEC. 8. (a)(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) * * *

* * * * * * *

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) * * *

(II) the anticipated award price of the contract (including options) will exceed **[**$5,000,000**]** *$5,500,000* in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and **[**$3,000,000**]** *$5,100,000* (including options) in the case of all other contract opportunities.

* * * * * * *

(22) Rules similar to the rules of paragraphs (5) and (6) of subsection (m) shall apply for purposes of this subsection.

* * * * * * *

(d)(1) **[**It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, 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, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.**]** *It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualifying HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns participating in the program established by section 8(a), and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.* It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, 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.

* * * * * * *

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

[(1) DEFINITIONS.—In this subsection, the following definitions apply:

[(A) CONTRACTING OFFICER.—The term "contracting officer" has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

[(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term "small business concern owned and controlled by women" has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

[(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) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

[(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

[(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

[(D) the anticipated award price of the contract (including options) does not exceed—

[(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

[(ii) $3,000,000, in the case of all other contracts;

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

[(F) 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.

[(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

[(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are under-represented with respect to Federal procurement contracting.]

(1) DEFINITION.—In this subsection, the term "small business concern owned and controlled by women" has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

(2) AUTHORITY TO RESTRICT COMPETITION.—

(A) IN GENERAL.—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—

(i) each of the concerns is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(ii) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by women will submit offers for the contract;

(iii) the contract is for the procurement of goods or services with respect to an industry identified pursuant to paragraph (4);

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

(v) each concern is certified in a manner described in subparagraph (B).

(B) ACCEPTANCE OF CERTIFICATION.—For purposes of subparagraph (A)(v), a contracting officer is required to accept a small business concern's certification as a small business concern owned and controlled by women when such certification is made by—

(i) a Federal agency or a State or local government;

(ii) a national certifying entity approved by the Administrator; or

(iii) the small business concern, when such concern 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 Administrator to support such certification.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive paragraph (2)(A)(i) if—

(A) such concern is in an industry identified pursuant to paragraph (4); and

(B) the Administrator determines that such concern is in an industry in which small business concerns owned and controlled by women are substantially under-represented in Federal contracting.

(4) IDENTIFICATION OF INDUSTRIES.—

(A) IN GENERAL.—Not less often than every five years, the Administrator shall conduct a study to identify, for pur-

poses of paragraphs (2)(A)(iii) and (3)(A), industries in which small business concerns owned and controlled by women are under-represented in Federal contracting. The parameters for the study shall be as follows:

(i) For purposes of this paragraph, the Administrator shall identify an industry if, and only if, the share of Federal contracts awarded to small business concerns owned and controlled by women in such industry is small relative to the prevalence of business concerns owned and controlled by women in the pool of business concerns in such industry that have at least one employee.

(ii) The study shall measure utilization and availability by—

(I) using the two best available data sources;

(II) including only business concerns that have at least one employee; and

(III) measuring only Federal contracts awarded for amounts over $25,000.

(iii) The study shall include four sets of disparity measurement tables to compute disparity ratios. The four sets are—

(I) all business concerns in the United States relative to the number of Federal contracts awarded to small business concerns owned and controlled by women;

(II) small business concerns owned and controlled by women that have demonstrated an interest in or that have secured Federal contracts relative to the number of Federal contracts awarded to small business concerns owned and controlled by women;

(III) all business concerns in the United States relative to the dollar amounts of Federal contracts awarded to small business concerns owned and controlled by women; and

(IV) small business concerns owned and controlled by women that have demonstrated an interest in or that have secured government contracts relative to the dollar amounts of Federal contracts awarded.

(B) DETERMINATION BY HEAD OF DEPARTMENT OR AGENCY.—Until such time as the Administrator completes the identification of industries required by subparagraph (A), the determination as to whether an industry is one in which small business concerns owned and controlled by women are under-represented in Federal contracting shall be made by the head of the department or agency for which the contract is to be performed.

(C) DEADLINE.—Not later than 90 days after the date of the enactment of this subparagraph, the Administrator shall—

(i) ensure the completion of the first study required by subparagraph (A);

(ii) approve national certifying entities for the purposes of paragraph (2)(B)(ii);

(iii) establish procedures required by paragraph (5)(A); and

(iv) establish standards described in paragraph (2)(B)(iii).

(5) ENFORCEMENT; PENALTIES.—

(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph [(2)(F)] *(2)(B)*); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph [(2)(F)] *(2)(B)*.

(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph [(2)(F)] *(2)(B)*.

* * * * * * *.

(D) PROTESTS BY SMALL BUSINESS CONCERNS.—For purposes of this paragraph, the term "interested party" shall include any small business concern.

* * * * * * *

SEC. 15. (a) * * *

* * * * * * *

(g)(1) [The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, 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.] *The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, 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, small business concerns participating in the program established by section 8(a), and small business concerns owned and controlled by women.* The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and

controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, 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 to participate in the performance of contracts let by such agency. The Administration and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

* * * * * * *

(3) Each agency shall, in consultation with the Administrator, establish goals for the usage, as prime contractors, of small business concerns that participate in the program under section 8(a).

(h)(1) * * *

* * * * * * *

(4) Each prime contractor shall, in consultation with the Administrator, establish goals for the usage, as subcontractors, of small business concerns that participate in the program under section 8(a).

* * * * * * *

SEC. 16. (a) * * *

* * * * * * *

(d)(1) Whoever misrepresents the status of any concern or person as a "small business concern", a "qualified HUBZone small business concern", a "small business concern owned and controlled by socially and economically disadvantaged individuals", *a "small business concern owned and controlled by service-disabled veterans",* or a "small business concern owned and controlled by women", in order to obtain for oneself or another any—

(A) * * *

* * * * * * *

SEC. 31. HUBZONE PROGRAM.

(a) * * *

(b) ELIGIBLE CONTRACTS.—

(1) * * *

(2) AUTHORITY OF CONTRACTING OFFICER.—Notwithstanding any other provision of law—

(A) a contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) * * *

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

(I) [$5,000,000] *$5,500,000*, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) [$3,000,000] *$5,100,000*, in the case of all other contract opportunities; and

* * * * * * *

(B) a contract opportunity [shall] *may* be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price; and

* * * * * * *

(5) ON-SITE VERIFICATION OF STATUS.—

(A) VERIFICATION.—When a small business concern that has previously been awarded a contract under paragraph (2)(A) or (2)(B) is to be awarded a second contract under paragraph (2)(A) or (2)(B), the Administrator shall perform an on-site inspection to determine whether such small business concern is a qualified HUBZone small business concern. This paragraph does not require such an inspection before the award of a third or subsequent contract. This paragraph does not prevent a second contract from being awarded before such inspection is completed.

(B) NOTIFICATION BY SMALL BUSINESS CONCERN.—The Administrator shall require a small business concern to notify the Administrator, prior to being awarded a second contract under paragraph (2)(A) or (2)(B), of such business concern's attempt to be awarded a second contract under paragraph (2)(A) or (2)(B). Not later than 90 days after the date of the enactment of this subparagraph, the Administrator shall establish procedures to implement this subparagraph.

(6) LIMIT HUBZONE PROGRAM CONSTRUCTION CONTRACTS IN OR NEAR A HUBZONE.—A small business concern may not obtain a construction contract by reason of the HUBZone program unless the construction project is located in or near the HUBZone in which the small business concern has its principal place of

business. The Administrator shall prescribe standards for determining when a project is located "near" a HUBZone for purposes of this paragraph, except that under no circumstances can a project located more than 150 miles from a HUBZone be located "near" that HUBZone.

(c) ENFORCEMENT; PENALTIES.—

(1) * * *

* * * * * * *

(5) PROTESTS BY SMALL BUSINESS CONCERNS.—For purposes of this subsection, the term "interested party" shall include any small business concern.

* * * * * * *

SEC. 36. PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

(a) SOLE SOURCE CONTRACTS.—In accordance with this section, a contracting officer [may] *shall* award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity [and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity];

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

(A) [$5,000,000] *$5,500,000*, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(B) [$3,000,000] *$5,100,000*, in the case of any other contract opportunity; and

* * * * * * *

(f) IMPLEMENTATION OF EXECUTIVE ORDER 13360.—The Administrator shall—

(1) provide small business concerns owned and controlled by service-disabled veterans with information and assistance concerning participation in Federal contracting;

(2) advise and assist other agencies in their strategies to expand procurement opportunities for such concerns; and

(3) make training assistance on Federal contract law, procedures, and practices available to such concerns.

* * * * * * *

SEC. 38. REQUIRING BUSINESS INTEGRITY OF SMALL BUSINESS CONCERNS.

(a) SECTION 8(a) PROGRAM BACKGROUND CHECK.—No applicant may be approved for participation in the section 8(a) program unless the Administrator first performs a background check on the applicant and determines that the applicant does not lack business integrity.

(b) HUBZONE PROGRAM BACKGROUND CHECK.—No award of a second contract under the authority of section 31(b)(2)(A) or 31(b)(2)(B) may be made unless the Administrator first performs a background

check on the applicant and determines that the applicant does not lack business integrity.

(c) RANDOM BACKGROUND CHECK.—The Administrator shall have random background checks performed on owners and officers of small business concerns that have been awarded a contract under section 8(m), 36(a), or 36(b) to determine whether such owners and officers lacks business integrity.

SECTION 155 OF THE SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING ASSISTANCE ACT OF 2004

SEC. 155. PARTICIPATION IN FEDERALLY FUNDED PROJECTS.

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government. *Annually, concurrent with the submission of the Small Business Administration's budget request to the Congress, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report detailing progress the Administrator has made towards the implementation of this section.*

○