112TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Goaling Act of 2012''.

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

(a) HEADING.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by striking the subsection enumerator and inserting the following:

"(g) GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—".

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

"(1) GOVERNMENTWIDE GOALS.—The President shall annually establish Governmentwide 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 in accordance with the following:

"(A) The Governmentwide goal for participation by small business concerns shall be established at not less than 25 percent of the total value of all prime contract awards for each fiscal year and 40 percent of the total value of all subcontract awards for each fiscal year.

"(B) The Governmentwide 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 at not less than 3 percent of the total value of all subcontract awards for each fiscal year.

"(C) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and at not less than 3 percent of the total value of all subcontract awards for each fiscal year.

"(D) The Governmentwide 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 at not less than 5 percent of the total value of all subcontract awards for each fiscal year.

"(E) The Governmentwide 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 at not less than 5 percent of the total value of all subcontract awards for each fiscal year.

"(F) The Administrator shall ensure 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.".

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

"(2) AGENCY GOALS.—

"(A) ESTABLISHMENT.—The head of each Federal agency shall annually establish, for the agency that individual heads, 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.

"(B) RELATIONSHIP TO GOVERNMENT-WIDE GOALS.—

"(i) SCOPE.—The goals established by the head of a Federal agency under subparagraph (A) shall be in the same format as the goals established by the President under paragraph (1) and shall address both prime contract and subcontract awards.

"(ii) REQUIREMENT TO MEET OR EXCEED GOVERNMENTWIDE GOALS.—The participation percentage applicable to each goal for a fiscal year established under subparagraph (A) for 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 may not be less than the participation percentage applicable to the Governmentwide goal for such fiscal year established under paragraph (1) for such category.

"(C) CONSULTATION REQUIRED.—

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

"(ii) DISAGREEMENTS.—If the Administrator and the head of a Federal agency fail to agree on a goal established under subparagraph (A), the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

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

"(E) EXPANDED PARTICIPATION.—In establishing goals under subparagraph (A), the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts of such agency, including participation by small business

concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

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

"(i) contracts awarded as the result of unrestricted competition; and

"(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

"(G) COMMUNICATION REGARDING GOALS.—

"(i) IMPORTANCE OF ACHIEVING GOALS.—Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving goals established under subparagraph (A).

"(ii) PROCUREMENT EMPLOYEES OR PROGRAM MANAGERS DESCRIBED.—A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.".

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

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

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

"(A) where the contract is awarded;

"(B) where the contract is performed;

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

"(D) whether funding for the contract is made available in an appropriations Act, if the contract is subject to the Competition in Contracting Act; or

"(E) whether the contract is subject to the Federal Acquisition Regulation.".

SEC. 3. REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.

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

"(h) REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

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

"(A) the extent of the participation by small business concerns, small business con-

cerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

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

"(C) any justifications for a failure to achieve such goals.

"(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress a report that includes—

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

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

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

"(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2)(A) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, except that the Administrator must concur with each remediation plan;

"(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

"(i) small business concerns—

"(I) in the aggregate;

"(II) through sole source contracts;

"(III) through competitions restricted to small business concerns; and

"(IV) through unrestricted competition;

"(ii) small business concerns owned and controlled by service-disabled veterans—

"(I) in the aggregate;

"(II) through sole source contracts;

"(III) through competitions restricted to small business concerns;

"(IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans; and

"(V) through unrestricted competition;

"(iii) qualified HUBZone small business concerns—

"(I) in the aggregate;

"(II) through sole source contracts;

"(III) through competitions restricted to small business concerns;

"(IV) through competitions restricted to qualified HUBZone small business concerns;

"(V) through unrestricted competition where a price evaluation preference was used; and

"(VI) through unrestricted competition where a price evaluation preference was not used;

"(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—

"(I) in the aggregate;

"(II) through sole source contracts;

"(III) through competitions restricted to small business concerns;

"(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

"(V) through unrestricted competition;

"(v) small business concerns owned by an Alaska Native Corporation—

"(I) in the aggregate;

"(II) through sole source contracts;

"(III) through competitions restricted to small business concerns;

"(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

"(V) through unrestricted competition; and

"(vi) small business concerns owned and controlled by women—

"(I) in the aggregate;

"(II) through competitions restricted to small business concerns;

"(III) through competitions restricted using the authority under section 8(m)(2);

"(IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used; and

"(V) through unrestricted competition; and

"(F) for the Federal Government and each Federal agency, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year 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.".

SEC. 4. SENIOR EXECUTIVES.

(a) TRAINING.—Section 3396(a) of title 5, United States Code, is amended by adding at the end the following: "A program established under this subsection shall include training with respect to Federal procurement requirements, including contracting requirements under the Small Business Act (15 U.S.C. 631 et seq.).".

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

(1) in paragraph (4), by striking "and" and the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(6) meeting the goals established by the head of the agency under section 15(g)(2)(A) of the Small Business Act (15 U.S.C. 644(g)(2)(A)).''.