

117TH CONGRESS
2D SESSION

S. 5344

To establish a pilot program for transitioning small businesses in the construction or engineering industries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Mr. YOUNG (for himself, Mr. HICKENLOOPER, and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To establish a pilot program for transitioning small businesses in the construction or engineering industries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Solving the Unneces-
5 sary Contracting Cliff for Enterprises to Scale Success-
6 fully Act” or the “SUCCESS Act”.

1 **SEC. 2. PILOT PROGRAM FOR TRANSITIONING SMALL BUSI-**
2 **NESSES IN THE CONSTRUCTION OR ENGI-**
3 **NEERING INDUSTRIES.**

4 The Small Business Act (15 U.S.C. 631 et seq.) is
5 amended by inserting after section 32 the following:

6 **“SEC. 33. PILOT PROGRAM FOR TRANSITIONING SMALL**
7 **BUSINESSES IN THE CONSTRUCTION OR EN-**
8 **GINEERING INDUSTRIES.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) ELIGIBLE CONCERN.—The term ‘eligible
11 concern’ means a concern that has grown to exceed
12 the size standard applicable to the North American
13 Industry Classification System code corresponding
14 to—

15 “(A) commercial and institutional building
16 construction; or

17 “(B) engineering services.

18 “(2) PARTICIPANT.—The term ‘Participant’
19 means an eligible concern that—

20 “(A) meets the criteria described in sub-
21 section (d); and

22 “(B) participates in the Program.

23 “(3) PROGRAM.—The term ‘Program’ means
24 the pilot program for transitioning small businesses
25 established under paragraph (b).

1 “(b) ESTABLISHMENT.—Not later than 1 year after
 2 the date of enactment of this section, the Administrator
 3 shall promulgate regulations establishing a pilot program
 4 to foster the continued success of eligible concerns by per-
 5 mitting those concerns to qualify as small for certain con-
 6 tracts during a transitional period.

7 “(c) PURPOSE.—The purpose of the Program is to
 8 assist eligible concerns in their transition from small busi-
 9 ness concerns to other-than-small and thereby increase
 10 competition in the unrestricted Federal marketplace.

11 “(d) CRITERIA FOR PARTICIPATION.—

12 “(1) ELECTION.—An eligible concern may make
 13 a one-time election, which shall not be changed, to
 14 participate, with respect to the primary activity of
 15 the eligible concern, under—

16 “(A) the North American Industry Classi-
 17 fication System Code corresponding to commer-
 18 cial and institutional building construction; or

19 “(B) the North American Industry Classi-
 20 fication System Code corresponding to engi-
 21 neering services.

22 “(2) REGISTRATION.—An eligible concern
 23 shall—

24 “(A) register as a Participant with the
 25 System for Award Management (or any suc-

1 cessor system) on the date on which the eligible
2 concern makes the election under paragraph (1)
3 in the registry described in subsection (h); and

4 “(B) ensure that the registration of the eli-
5 gible concern is current and accurate.

6 “(3) TERM OF THE TRANSITIONAL PERIOD.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the transitional period, dur-
9 ing which an eligible concern may be eligible to
10 participate in the Program, shall—

11 “(i) begin on the date which the eligi-
12 ble concern first exceeds the size standard
13 applicable to the North American Industry
14 Classification System code corresponding
15 to the industry elected by the concern pur-
16 suant to paragraph (1); and

17 “(ii) not exceed 7 consecutive years.

18 “(B) EXCEPTION.—An eligible concern
19 first exceeding the size standard described in
20 subparagraph (A)(i) within the 7-year period
21 immediately preceding the effective date of reg-
22 ulations issued under subsection (b) shall be eli-
23 gible to participate in the Program for the re-
24 mainder of the 7-year period beginning on the

1 date which the concern first exceeded the size
2 standard.

3 “(4) ACTIVITY TARGETS.—The regulations de-
4 scribed in subsection (b) shall establish non-small
5 business set aside business activity targets that—

6 “(A) are applicable to Participants during
7 the third year and each succeeding year of Pro-
8 gram participation; and

9 “(B) during the period of time described in
10 subparagraph (A), shall reflect a reasonably
11 consistent increase in sales other than obtained
12 through contracts set aside for small business
13 concerns, expressed as a percentage of total
14 sales.

15 “(5) CAP ON AVERAGE ANNUAL RECEIPTS.—
16 Each Participant shall be subject to a cap on aver-
17 age annual receipts that is 5 times the size standard
18 applicable to the North American Industry Classi-
19 fication System code corresponding to the industry
20 elected by the concern, calculated consistent with the
21 method in 121.104 of title 13, Code of Federal Reg-
22 ulations, or any successor regulation.

23 “(6) CERTIFICATION.—

24 “(A) IN GENERAL.—Each Participant shall
25 be required to annually certify in the System

1 for Award Management (or any successor sys-
2 tem) as to whether or not the Participant has—

3 “(i) met the activity target established
4 under paragraph (4) for the preceding
5 year; and

6 “(ii) complied with the restrictions de-
7 scribed in subsection (e).

8 “(B) NONCOMPLIANCE.—If a Participant
9 certifies that the Participant has not met the
10 applicable activity targets established under
11 paragraph (4) for 2 consecutive years, or cer-
12 tifies that the Participant has not complied with
13 the restrictions described in subsection (e), the
14 Participant shall no longer be eligible to partici-
15 pate in the Program.

16 “(7) PARTICIPANT REPORT.—The regulations
17 issued under subsection (b) shall establish—

18 “(A) requirements for annual reporting by
19 Participants to the Administrator during Pro-
20 gram participation, to include reporting on
21 compliance with activity targets established
22 under paragraph (4), the number and dollar
23 value of contracts awarded based on eligibility
24 under subsection (f)(1), and information re-

1 required for the registry under subsection (h);
2 and

3 “(B) reporting requirements applicable for
4 a period of not less than 5 years after exiting
5 the Program.

6 “(8) NO REINSTATEMENT.—Upon the expira-
7 tion of the transitional period, or once a Participant
8 otherwise becomes ineligible for the Program, the
9 concern shall not be eligible for reinstatement in the
10 Program.

11 “(e) RESTRICTIONS.—

12 “(1) MENTOR-PROTÉGÉ.—

13 “(A) IN GENERAL.—A Participant may not
14 apply to be a protégé under a mentor-protégé
15 program established under this Act.

16 “(B) EXISTING PROTÉGÉS.—A Participant
17 that is already a protégé prior to registration
18 under the Program under subsection (d)(2)
19 may, in years 1 and 2 of the transitional period
20 of the Program, continue to submit proposals in
21 a mentor-protégé program established under
22 this Act.

23 “(2) ADDITIONAL RESTRICTIONS.—In addition
24 to the restrictions described in paragraph (1), the
25 Administrator may include additional restrictions for

1 Participants consistent with the purposes of this
2 Act.

3 “(f) PURPOSES FOR WHICH PARTICIPANTS MAY
4 QUALIFY AS SMALL.—Subject to the restrictions in para-
5 graph (e), a Participant may otherwise qualify as small
6 for purposes of the following:

7 “(1) Contracts that are set aside for small busi-
8 ness concerns and assigned a North American In-
9 dustry Classification System code corresponding to
10 the industry elected by the Participant under sub-
11 section (d)(1) and—

12 “(A) the Government of the United States
13 expects to be equal to or exceed—

14 “(i) for commercial and institutional
15 building construction, \$5,000,000; and

16 “(ii) for engineering services,
17 \$1,000,000; and

18 “(B) any orders under such contracts irre-
19 spective of the value of the order.

20 “(2) Goals established pursuant to section
21 15(g) for participation by small business concerns,
22 small business concerns owned and controlled by
23 service-disabled veterans, qualified HUBZone small
24 business concerns, small business concerns owned
25 and controlled by socially and economically disadvan-

1 tagged individuals, and small business concerns
2 owned and controlled by women.

3 “(g) TERMINATION.—

4 “(1) IN GENERAL.—The Program shall termi-
5 nate on the date that is 10 years after the date of
6 enactment of this section.

7 “(2) CONTINUATION OF PARTICIPATION.—Not-
8 withstanding paragraph (1), any Participant in the
9 program as of the date on which the Program termi-
10 nates under paragraph (1) may continue to partici-
11 pate until the expiration of the term of the Partici-
12 pant under subsection (d)(3).

13 “(h) PUBLICATION OF REGISTRY REQUIRED.—The
14 Administrator shall establish and maintain in the System
15 for Award Management (or any successor system) a reg-
16 istry of eligible Participants, which registry shall, to the
17 extent practicable—

18 “(1) include the name, address, transitional pe-
19 riod entry and exit dates, and elected North Amer-
20 ican Industry Classification System code with re-
21 spect to each Participant; and

22 “(2) be updated by the Administrator not less
23 than annually.

1 “(i) ADDITIONAL INFORMATION TO BE MAIN-
2 TAINED.—The Administrator shall maintain data regard-
3 ing—

4 “(1) the number of Participants in the Pro-
5 gram;

6 “(2) the number of former Participants that
7 have exited the Program;

8 “(3) the number of former Participants that
9 have successfully transitioned to other-than-small,
10 under such criteria as the Administrator may estab-
11 lish;

12 “(4) the number of former Participants that
13 have returned to being small under North American
14 Industry Classification System code elected by the
15 Participant under subsection (d)(1); and

16 “(5) the total dollar value of small business
17 awards made each fiscal year to Participants by
18 each Federal agency.

19 “(j) GAO STUDY AND REPORT.—

20 “(1) STUDY.—Not later than 2 years after the
21 date of enactment of this section, the Comptroller
22 General of the United States shall begin conducting
23 a study to evaluate the implementation of the Pro-
24 gram.

1 “(2) REPORT.—Not later than 8 years after the
2 date of enactment of this section, the Comptroller
3 General of the United States shall submit to Con-
4 gress a report on the results of the study required
5 under paragraph (1), which shall include—

6 “(A) an assessment of the feasibility and
7 advisability of broadening the Program to in-
8 clude additional industries, as defined under the
9 North American Industry Classification System;

10 “(B) the effects of the Program, if any, on
11 Participants and on the industrial base;

12 “(C) any recommendations for improving
13 the Program, including whether the Program
14 should be made permanent; and

15 “(D) any additional findings and rec-
16 ommendations as the Comptroller General of
17 the United States considers appropriate.”.

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