

116TH CONGRESS
1ST SESSION

S. 673

To amend the Small Business Act to eliminate the inclusion of option years in the award price for sole source contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2019

Ms. ERNST (for herself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to eliminate the inclusion of option years in the award price for sole source contracts, 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 “Expanding Contracting
5 Opportunities for Small Businesses Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

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

4 (2) the term “small business concern owned
5 and controlled by service-disabled veterans” has the
6 meaning given the term in section 3(q) of the Small
7 Business Act (15 U.S.C. 632(q)); and

8 (3) the term “small business concern owned
9 and controlled by women” has the meaning given the
10 term in section 8(m) of the Small Business Act (15
11 U.S.C. 637(m)).

12 **SEC. 3. AMENDMENTS TO CONTRACTING AUTHORITY FOR**
13 **CERTAIN SMALL BUSINESS CONCERNS.**

14 (a) **QUALIFIED HUBZONE SMALL BUSINESS CON-**
15 **CERNS.**—Section 31(b)(2)(A) of the Small Business Act
16 (15 U.S.C. 657a(b)(2)(A)) is amended to read as follows:

17 “(A) **SOLE SOURCE CONTRACTS.**—A con-
18 tracting officer may award sole source contracts
19 under this section to any qualified HUBZone
20 small business concern, if—

21 “(i) the qualified HUBZone small
22 business concern is determined to be a re-
23 sponsible contractor with respect to per-
24 formance of the contract opportunity;

1 “(ii) the contracting officer does not
2 have a reasonable expectation that 2 or
3 more qualified HUBZone small business
4 concerns will submit offers for the contract
5 opportunity;

6 “(iii) the anticipated award price of
7 the contract will not exceed—

8 “(I) \$7,000,000, in the case of a
9 contract opportunity assigned a stand-
10 ard industrial classification code for
11 manufacturing; or

12 “(II) \$4,000,000, in the case of
13 all other contract opportunities;

14 “(iv) in the estimation of the con-
15 tracting officer, the contract award can be
16 made at a fair and reasonable price; and

17 “(v) the base and each of the option
18 years of the award, if any, are of similar
19 value.”.

20 (b) SMALL BUSINESS CONCERN OWNED AND CON-
21 TROLLED BY SERVICE-DISABLED VETERANS.—Section
22 36(a) of the Small Business Act (15 U.S.C. 657f(a)) is
23 amended to read as follows:

24 “(a) SOLE SOURCE CONTRACTS.—In accordance with
25 this section, a contracting officer may award a sole source

1 contract to any small business concern owned and con-
2 trolled by service-disabled veterans if—

3 “(1) the concern is determined to be a respon-
4 sible contractor with respect to performance of the
5 contract opportunity;

6 “(2) the contracting officer does not have a rea-
7 sonable expectation that 2 or more small business
8 concerns owned and controlled by service-disabled
9 veterans will submit offers for the contract oppor-
10 tunity;

11 “(3) the anticipated award price of the contract
12 will not exceed—

13 “(A) \$7,000,000, in the case of a contract
14 opportunity assigned a standard industrial clas-
15 sification code for manufacturing; or

16 “(B) \$4,000,000, in the case of any other
17 contract opportunity;

18 “(4) in the estimation of the contracting officer,
19 the contract award can be made at a fair and rea-
20 sonable price;

21 “(5) the contracting officer has notified the Ad-
22 ministration of the intent to make the award and re-
23 quested that the Administration determine the eligi-
24 bility of the concern for the award;

1 “(6) the base and each of the option years of
2 the award, if any, are of similar value; and

3 “(7) the Administration has determined that
4 the concern is eligible for the award.”.

5 (c) CERTAIN SMALL BUSINESS CONCERNS OWNED
6 AND CONTROLLED BY WOMEN.—Section 8(m) of the
7 Small Business Act (15 U.S.C. 637(m)) is amended—

8 (1) by amending paragraph (7) to read as fol-
9 lows:

10 “(7) AUTHORITY FOR SOLE SOURCE CON-
11 TRACTS FOR ECONOMICALLY DISADVANTAGED
12 SMALL BUSINESS CONCERNS OWNED AND CON-
13 TROLLED BY WOMEN.—A contracting officer may
14 award a sole source contract under this subsection
15 to any small business concern owned and controlled
16 by women described in paragraph (2)(A) and cer-
17 tified under paragraph (2)(E) if—

18 “(A) the concern is determined to be a re-
19 sponsible contractor with respect to perform-
20 ance of the contract opportunity;

21 “(B) the contracting officer does not have
22 a reasonable expectation that 2 or more small
23 business concerns owned and controlled by
24 women described in paragraph (2)(A) will sub-
25 mit offers for the contract opportunity;

1 “(C) the anticipated award price of the
2 contract will not exceed—

3 “(i) \$7,000,000, in the case of a con-
4 tract opportunity assigned a standard in-
5 dustrial classification code for manufac-
6 turing; or

7 “(ii) \$4,000,000, in the case of any
8 other contract opportunity;

9 “(D) in the estimation of the contracting
10 officer, the contract award can be made at a
11 fair and reasonable price;

12 “(E) the contracting officer has notified
13 the Administration of the intent to make the
14 award and requested that the Administration
15 determine the eligibility of the concern for the
16 award;

17 “(F) the base and each of the option years
18 of the award, if any, are of similar value; and

19 “(G) the Administration has determined
20 that the concern is eligible for the award.”; and

21 (2) by amending paragraph (8) to read as fol-
22 lows:

23 “(8) AUTHORITY FOR SOLE SOURCE CON-
24 TRACTS FOR SMALL BUSINESS CONCERNS OWNED
25 AND CONTROLLED BY WOMEN IN SUBSTANTIALLY

1 UNDERREPRESENTED INDUSTRIES.—A contracting
2 officer may award a sole source contract under this
3 subsection to any small business concern owned and
4 controlled by women certified under paragraph
5 (2)(E) that is in an industry in which small business
6 concerns owned and controlled by women are sub-
7 stantially underrepresented (as determined by the
8 Administrator under paragraph (3)) if—

9 “(A) the concern is determined to be a re-
10 sponsible contractor with respect to perform-
11 ance of the contract opportunity;

12 “(B) the contracting officer does not have
13 a reasonable expectation that 2 or more busi-
14 nesses in an industry that has received a waiver
15 under paragraph (3) will submit offers for the
16 contract opportunity;

17 “(C) the anticipated award price of the
18 contract will not exceed—

19 “(i) \$7,000,000, in the case of a con-
20 tract opportunity assigned a standard in-
21 dustrial classification code for manufac-
22 turing; or

23 “(ii) \$4,000,000, in the case of any
24 other contract opportunity;

1 “(D) in the estimation of the contracting
2 officer, the contract award can be made at a
3 fair and reasonable price;

4 “(E) the contracting officer has notified
5 the Administration of the intent to make the
6 award and requested that the Administration
7 determine the eligibility of the concern for the
8 award;

9 “(F) the base and each of the option years
10 of the award, if any, are of similar value; and

11 “(G) the Administration has determined
12 that the concern is eligible for the award.”.

13 (d) SOCIALLY AND ECONOMICALLY DISADVANTAGED
14 SMALL BUSINESS CONCERNS.—Section 8(a)(1)(D)(i) of
15 the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) is
16 amended to read as follows:

17 “(D)(i) A contracting officer may award sole
18 source contracts under this subsection to any quali-
19 fied socially and economically disadvantaged small
20 business concern, as defined in paragraph (4)(A),
21 if—

22 “(I) the qualified socially and economically
23 disadvantaged small business concern is deter-
24 mined to be a responsible contractor with re-

1 spect to performance of the contract oppor-
2 tunity;

3 “(II) the contracting officer does not have
4 a reasonable expectation that 2 or more quali-
5 fied socially and economically disadvantaged
6 small business concerns will submit offers for
7 the contract opportunity;

8 “(III) the anticipated award price of the
9 contract will not exceed—

10 “(aa) \$7,000,000, in the case of a
11 contract opportunity assigned a standard
12 industrial classification code for manufac-
13 turing; or

14 “(bb) \$4,000,000, in the case of any
15 other contract opportunity;

16 “(IV) in the estimation of the contracting
17 officer, the contract award can be made at a
18 fair and reasonable price; and

19 “(V) the base and each of the option years
20 of the award, if any, are of similar value.”.

21 **SEC. 4. SBA CERTIFICATION PROGRAM NOTIFICATION.**

22 (a) IN GENERAL.—The Administrator shall notify
23 the Committee on Small Business and Entrepreneurship
24 of the Senate and the Committee on Small Business of

1 the House of Representatives when the Administrator has
2 implemented each of the following:

3 (1) A program to certify small business con-
4 cerns owned and controlled by women.

5 (2) A program to certify small business con-
6 cerns owned and controlled by service-disabled vet-
7 erans.

8 (b) **ADDITIONAL NOTICE.**—The Administrator shall
9 submit a copy of a notification required under subsection
10 (a) to the Law Revision Counsel of the House of Rep-
11 resentatives so that the Law Revision Counsel may execute
12 the amendments required under section 5.

13 **SEC. 5. REMOVAL OF ELIGIBILITY DETERMINATION UPON**
14 **IMPLEMENTATION OF CERTIFICATION PRO-**
15 **GRAMS.**

16 Effective upon the notification described in section 4,
17 the Small Business Act (15 U.S.C. 631 et seq.), as amend-
18 ed by section 3 of this Act, is amended—

19 (1) in section 8(m) (15 U.S.C. 637(m))—

20 (A) in paragraph (7)—

21 (i) in subparagraph (D), by adding
22 “and” at the end;

23 (ii) by striking subparagraphs (E) and
24 (G);

1 (iii) by redesignating subparagraph
2 (F) as subparagraph (E); and

3 (iv) in subparagraph (E), as so rededesignated,
4 by striking “; and” and inserting
5 a period; and

6 (B) in paragraph (8)—

7 (i) in subparagraph (D), by adding
8 “and” at the end;

9 (ii) by striking subparagraphs (E) and
10 (G);

11 (iii) by redesignating subparagraph
12 (F) as subparagraph (E); and

13 (iv) in subparagraph (E), as so rededesignated,
14 by striking “; and” and inserting
15 a period; and

16 (2) in section 36(a) (15 U.S.C. 657f(a))—

17 (A) in paragraph (3), by adding “and” at
18 the end;

19 (B) in paragraph (4), by striking the semi-
20 colon at the end and inserting a period; and

21 (C) by striking paragraphs (5), (6), and
22 (7).

23 **SEC. 6. GAO REPORT.**

24 (a) STUDY.—With respect to the procurement pro-
25 grams of the Administration for small business concerns

1 owned and controlled by women and for small business
2 concerns owned and controlled by service-disabled vet-
3 erans, the Comptroller General of the United States shall
4 conduct an evaluation of the policies and practices used
5 by the Administration and other Federal agencies to pro-
6 vide assurances that—

7 (1) contracting officers are properly classifying
8 sole source awards under those programs in the
9 Federal Procurement Data System; and

10 (2) sole source contracts awarded under those
11 programs are being awarded to eligible concerns.

12 (b) REPORT.—Not later than 18 months after the
13 date on which the Administration implements the certifi-
14 cation programs described in section 4(a), the Comptroller
15 General of the United States shall submit to the Com-
16 mittee on Small Business and Entrepreneurship of the
17 Senate and the Committee on Small Business of the
18 House of Representatives a report containing the findings
19 made in carrying out the study required under subsection
20 (a).

21 (c) SBA CONSIDERATION OF GAO REPORT.—

22 (1) IN GENERAL.—The Administrator shall re-
23 view the report issued under subsection (b) and take
24 such actions as the Administrator may determine
25 appropriate to address any concerns raised in the re-

1 port and any recommendations contained in the re-
2 port.

3 (2) REPORT TO CONGRESS.—After the review
4 described under paragraph (1), the Administrator
5 shall submit to Congress a report—

6 (A) stating that no additional actions were
7 necessary to address any concerns or rec-
8 ommendations contained in the report; or

9 (B) describing the actions taken by the
10 Administrator to resolve those concerns or im-
11 plement those recommendations.

○