

EARLY STAGE SMALL BUSINESS CONTRACTING ACT
OF 2012

DECEMBER 21, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 4121]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill
(H.R. 4121) to provide for a program to provide Federal contracts
to early stage small businesses, and for other purposes, having con-
sidered the same, report favorably thereon with an amendment and
recommend that the bill as amended do pass.

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I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Early Stage Small Business Contracting Act of 2012”.

SEC. 2. IN GENERAL.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by adding at the end the following:

“SEC. 46. PROGRAM TO PROVIDE FEDERAL CONTRACTS TO EARLY STAGE SMALL BUSINESSES.

“(a) **ESTABLISHMENT.**—The Administrator shall establish and carry out a program in accordance with the requirements of this section to provide improved access to Federal contract opportunities for early stage small business concerns.

“(b) **PROCUREMENT CONTRACTS.**—

“(1) **IN GENERAL.**—In carrying out subsection (a), the Administrator, in consultation with other Federal agencies, shall identify procurement contracts of Federal agencies for award under the program.

“(2) **CONTRACT AWARDS.**—Under the program established pursuant to this section, the award of a procurement contract of a Federal agency identified by the Administrator pursuant to paragraph (1) shall be made by the agency to an eligible program participant selected, and determined to be responsible, by the agency.

“(3) **COMPETITION.**—

“(A) **SOLE SOURCE.**—A contracting officer may award a sole source contract under this program if 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 early stage small business concerns will submit offers for the contracting opportunity and in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

“(B) **RESTRICTED COMPETITION.**—A contracting officer may award contracts on the basis of competition restricted to early stage small business concerns if the contracting officer has a reasonable expectation that not less than 2 early stage small business concerns will submit offers and that the award can be made at a fair market price.

“(4) **CONTRACT VALUE.**—Contracts shall be awarded under this program if its value is greater than \$3,000 and less than half the upper threshold of section 15(j)(1) of the Small Business Act.

“(c) **ELIGIBILITY.**—Only an early stage small business concern shall be eligible to compete for a contract to be awarded under the program. The Administrator shall certify that a small business concern is an early stage small business concern, or the Administrator shall approve a Federal agency, a State government, or a national certifying entity to certify that the business meets the eligibility criteria of an early stage small business concern.

“(d) **TECHNICAL ASSISTANCE.**—The Administrator shall provide early stage small business concerns with technical assistance and counseling with regard to—

“(1) applying for and competing for Federal contracts; and

“(2) fulfilling the administrative responsibilities associated with the performance of a Federal contract.

“(e) **ATTAINMENT OF CONTRACT GOALS.**—All contract awards made under the program shall be counted toward the attainment of the goals specified in section 15(g) of the Small Business Act.

“(f) **REGULATIONS.**—The Administrator shall—

“(1) issue proposed regulations to carry out this section not later than 180 days after the date of enactment of this Act; and

“(2) issue final regulations to carry out this section not later than 270 days after the date of enactment of this Act.

“(g) **REPORT TO CONGRESS.**—Not later than April 30, 2015, the Administrator shall transmit to the Congress a report on the performance of the program.

“(h) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

“(1) **PROGRAM.**—The term ‘program’ means a program established pursuant to subsection (a).

“(2) **EARLY STAGE SMALL BUSINESS CONCERN.**—The term ‘early stage small business concern’ means a small business concern that—

“(A) has not more than 15 employees; and

“(B) has average annual receipts that total not more than \$1,000,000, except if the concern is in an industry with an average annual revenue stand-

ard that is less than \$1,000,000, as defined by the North American Industry Classification System.”.

SEC. 3. REPEAL OF SIMILAR PROGRAM.

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (15 U.S.C. 644 note) is repealed.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4121, the “Early Stage Small Business Contracting Act of 2012,” is to amend the Small Business Act (the Act)¹ to reestablish in a slightly different format a successful program to help very small businesses win federal government contracts. The original program’s authorization has lapsed, and H.R. 4121 rectifies that situation.

Specifically, this bill changes the program’s name from the Very Small Business Pilot Program to the Early Stage Small Business Contracting Program. Additionally, this bill allows for sole source contracts and contracts to be restricted to competition between early stage small business concerns under certain circumstances. Finally, the bill requires a report to Congress by the Administrator of the Small Business Administration (SBA) by April 30, 2015 on the performance of the program.

III. NEED FOR LEGISLATION

The Act iterates Congress’s belief in the importance of small business participation in federal prime contracts and the resultant subcontracts. Specifically, the Act directs that:

To effectuate the purpose of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation’s full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchase and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government be made to small-business concerns.²

To effectuate these objectives, Congress has enacted six different contract programs overseen by the SBA’s Office of Government Contracting and Business Development. Previously, under section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994³ the Small Business Administration (SBA) was authorized to administer a federal contracting pilot program for very small business concerns. Under this program, a very small business concern was defined as a small business which had

¹Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232 was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85–536, § 1, 72m Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657q.

²*Id.* at 644(a).

³Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103–403 § 304, 108 Stat. 4175, 4188 (1994).

15 employees or fewer and whose average annual receipts were below \$1 million. The purpose of the program was “to improve access to government contract opportunities for concerns that are substantially below SBA’s size standards by reserving certain acquisitions for competition among such concerns.”⁴ Although the pilot was originally set to expire in 1998, a number of Congressional actions extending all SBA programs were enacted which extended the authorization of the pilot program. However, when Congress enacted changes to the Small Business Act in 2004, it did not include the extension of this pilot program.⁵ H.R. 4121 reestablishes the program with stronger certification requirements and changes the program’s name to “early stage small business concerns” rather than “very small business concerns,” because the program is being reoriented to assist new businesses rather than long-established very small businesses.

IV. HEARINGS

Since H.R. 4121 is reauthorizing a program with a lapsed reauthorization, the findings of previous Congresses with respect to the matter raised in this legislation were determined still valid. As a result, no hearings were held on H.R. 4121.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 07, 2012, and ordered H.R. 4121 reported, as amended, to the House by a voice vote at 3:10 pm. During the markup, one amendment was offered and adopted. Disposition of the amendment is addressed below.

Amendment Number One filed by Mr. Graves (R–MO) makes a technical correction to the bill and clarifies a reference to a statute which would be obsolete under H.R. 4121. Amendment Number One was adopted by a voice vote at 3:10 pm.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. No recorded votes were taken in consideration of H.R. 4121.

AMENDMENT TO H.R. 4121

OFFERED BY MR. GRAVES OF MISSOURI

Page 5, insert after line 14 the following:

SEC. 3. REPEAL OF SIMILAR PROGRAM.

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (15 U.S.C. 644 note) is repealed.

⁴Very Small Business Pilot Program, 48 C.F.R. 19.901(b) (repealed by in 2005 as the program failed to be reauthorized.)

⁵The Very Small Business Program,—Final Rule (repeal), 70 Fed. Reg. 56,815 (Sept. 29, 2005).

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 4121

SECTION-BY-SECTION ANALYSIS OF H.R. 4121 AS AMENDED

Section 1—Short title

This section provides that the bill may be cited as the “Early Stage Small Business Contracting Act of 2012.”

Section 2—In general

This section reauthorizes a federal contract program, previously known as the Very Small Business Program, as the Early Stage Small Business Contracting Program. This section defines “early stage small business concerns” as a firm with 15 or fewer employees and average annual receipts under \$1 million, except in an industry where the average annual revenue standard is less than \$1 million. There is an expectation that if the program is successful, businesses will quickly lose eligibility. The Committee expects that most businesses that would utilize the program are in their formative stages.

In order to participate in the program, this section requires the Small Business Administrator to certify the firm as an early stage small business concern or approve another Federal Agency, State government, or nationwide certification entity to certify the firm as such. This section allows for restricted competition if two or more early stage small businesses would compete and the contract award will be at fair and reasonable price. Further, it allows sole-source contracts to be awarded if the contracting officer does not have a reasonable expectation that two or more early stage small businesses will compete for the contract and the contract award will be at a fair and reasonable price. Additionally, this section requires the Small Business Administrator to issue a report on the performance of the program by April 30, 2015.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 1, 2012.

Hon. SAM GRAVES,
Chairman, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4121, the Early Stage Small Business Contracting Act of 2012.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4121—Early Stage Small Business Contracting Act of 2012

H.R. 4121 would require the Small Business Administration to establish a program to provide access to federal contracts to certain small businesses. Specifically, the legislation would give the first opportunity to obtain federal contracts valued between \$3,000 and

\$75,000 to businesses that employ fewer than 16 people and have annual receipts of \$1 million or less. (The bill defines such firms as early-stage small businesses.) Under the bill, the SBA would certify the status of such businesses.

Based on information from the SBA and the General Services Administration, CBO estimates that implementing H.R. 4121 would cost about \$20 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Those costs include about \$3 million a year for the SBA to administer the program and provide certifications and technical assistance to small businesses that meet the bill's definition. In addition, CBO estimates that \$5 million in start-up costs would be needed to train contract officers throughout the government to work with SBA and those small businesses to find appropriate opportunities and to help agencies meet their goals for contracting with small businesses. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4121 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.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

IX. UNFUNDED MANDATES

H.R. 4121 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104–4, and would impose no costs on state, local or tribal governments.

X. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures.

The Committee does not adopt as its own the estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to § 402 of the Congressional Budget Act of 1974. CBO estimates that implementing H.R. 4121 would cost about \$20 million over the five years. Those costs include \$3 million a year for the SBA to administer the program and provide certifications and technical assistance to small businesses that meet the bill's definition, and \$5 million in start-up costs to train contracting officers throughout the government. The Committee disagrees with these costs. H.R. 4121 allows the Administrator to accept certifications from third parties, so the Administrator need not establish an elaborate certification process. Furthermore, Congress already appropriates funds to train contracting officers. Including information on the Early Stage Small Business Contracting Program in this training will not require any additional appropriations.

XI. OVERSIGHT FINDINGS

In accordance with clause (2)(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 4121 are incorporated into the descriptive portions of this report.

XII. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cls. 1, 3, and 18 and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4121 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104–1.

XIV. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 4121 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 4121 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XVI. PERFORMANCE GOALS AND OBJECTIVES

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

H.R. 4121 includes provisions to reauthorize a federal contract program, previously known as the Very Small Business Program, as the Early Stage Small Business Contracting Program, in order to improve early stage small businesses access to federal contracts.

XVII. 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. 46. PROGRAM TO PROVIDE FEDERAL CONTRACTS TO EARLY STAGE SMALL BUSINESSES.

(a) *ESTABLISHMENT.*—The Administrator shall establish and carry out a program in accordance with the requirements of this section to provide improved access to Federal contract opportunities for early stage small business concerns.

(b) *PROCUREMENT CONTRACTS.*—

(1) *IN GENERAL.*—In carrying out subsection (a), the Administrator, in consultation with other Federal agencies, shall identify procurement contracts of Federal agencies for award under the program.

(2) *CONTRACT AWARDS.*—Under the program established pursuant to this section, the award of a procurement contract of a Federal agency identified by the Administrator pursuant to paragraph (1) shall be made by the agency to an eligible program participant selected, and determined to be responsible, by the agency.

(3) *COMPETITION.*—

(A) *SOLE SOURCE.*—A contracting officer may award a sole source contract under this program if 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 early stage small business concerns will submit offers for the contracting opportunity and in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(B) *RESTRICTED COMPETITION.*—A contracting officer may award contracts on the basis of competition restricted to early stage small business concerns if the contracting officer has a reasonable expectation that not less than 2 early stage small business concerns will submit offers and that the award can be made at a fair market price.

(4) *CONTRACT VALUE.*—Contracts shall be awarded under this program if its value is greater than \$3,000 and less than half the upper threshold of section 15(j)(1) of the Small Business Act.

(c) *ELIGIBILITY.*—Only an early stage small business concern shall be eligible to compete for a contract to be awarded under the program. The Administrator shall certify that a small business concern is an early stage small business concern, or the Administrator shall approve a Federal agency, a State government, or a national certifying entity to certify that the business meets the eligibility criteria of an early stage small business concern.

(d) *TECHNICAL ASSISTANCE.*—The Administrator shall provide early stage small business concerns with technical assistance and counseling with regard to—

(1) applying for and competing for Federal contracts; and

(2) fulfilling the administrative responsibilities associated with the performance of a Federal contract.

(e) *ATTAINMENT OF CONTRACT GOALS.*—All contract awards made under the program shall be counted toward the attainment of the goals specified in section 15(g) of the Small Business Act.

(f) *REGULATIONS.*—The Administrator shall—

- (1) *issue proposed regulations to carry out this section not later than 180 days after the date of enactment of this Act; and*
- (2) *issue final regulations to carry out this section not later than 270 days after the date of enactment of this Act.*

(g) *REPORT TO CONGRESS.*—Not later than April 30, 2015, the Administrator shall transmit to the Congress a report on the performance of the program.

(h) *DEFINITIONS.*—For purposes of this section, the following definitions shall apply:

(1) *PROGRAM.*—The term “program” means a program established pursuant to subsection (a).

(2) *EARLY STAGE SMALL BUSINESS CONCERN.*—The term “early stage small business concern” means a small business concern that—

(A) *has not more than 15 employees; and*

(B) *has average annual receipts that total not more than \$1,000,000, except if the concern is in an industry with an average annual revenue standard that is less than \$1,000,000, as defined by the North American Industry Classification System.*

SECTION 304 OF THE SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1994

[SEC. 304. PILOT PROGRAM FOR VERY SMALL BUSINESS CONCERNS.

[(a) *ESTABLISHMENT.*—The Administrator shall establish and carry out a pilot program in accordance with the requirements of this section to provide improved access to Federal contract opportunities for very small business concerns.

[(b) *PROCUREMENT CONTRACTS.*—

[(1) *IN GENERAL.*—In carrying out subsection (a), the Administrator shall identify procurement contracts of Federal agencies for award under the program.

[(2) *CONTRACT AWARDS.*—Under the program established pursuant to this section, the award of a procurement contract of a Federal agency identified by the Administration pursuant to paragraph (1) shall be made by the agency to an eligible program participant selected, and determined to be responsible, by the agency.

[(3) *COMPETITION.*—All contract opportunities offered for award under the program shall be awarded on the basis of competition among eligible very small business concerns.

[(c) *ELIGIBILITY.*—Only a very small business concern shall be eligible to compete for a contract to be awarded under the program. A contracting officer may rely in good faith on a written certification that a small business concern is a very small business concern.

[(d) *DELEGATION OF AUTHORITY.*—The authority of the Administrator under subsections (b)(1) and (c) shall be delegated to not less than 5 and not more than 10 districts of the Administration to promote the award of contracts that can be performed by very small business concerns.

[(e) *FINANCIAL ASSISTANCE.*—In order to assist very small business concerns receiving contract awards under the program, the

Administrator shall establish a preauthorization program for such concerns for the purpose of receiving financial assistance under section 7(a) of the Small Business Act.

[(f) ATTAINMENT OF CONTRACT GOALS.—All contract awards made under the program shall be counted toward the attainment of the goals specified in section 15(g) of the Small Business Act.

[(g) REGULATIONS.—The Administrator shall—

[(1) issue proposed regulations to carry out this section not later than 180 days after the date of enactment of this Act; and

[(2) issue final regulations to carry out this section not later than 270 days after the date of enactment of this Act.

[(h) REPORT TO CONGRESS.—Not later than April 30, 1997, the Administrator shall transmit to the Congress a report on the results of the program, together with such recommendations as the Administrator deems appropriate.

[(i) PROGRAM TERM.—Implementation of the program shall begin not later than August 30, 1995. The program authorized by this section shall expire on September 30, 2003.

[(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

[(1) ADMINISTRATION.—The term “Administration” means the Small Business Administration.

[(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration.

[(3) PROGRAM.—The term “program” means a program established pursuant to subsection (a).

[(4) VERY SMALL BUSINESS CONCERN.—The term “very small business concern” means a small business concern that—

[(A) has not more than 15 employees; and

[(B) has average annual receipts that total not more than \$1,000,000.]