

WOMEN’S PROCUREMENT PROGRAM IMPROVEMENT ACT
OF 2012

DECEMBER 27, 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. 4203]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill
(H.R. 4203) to amend the Small Business Act with respect to the
procurement program for women-owned small business concerns,
and for other purposes, having considered the same, report favor-
ably thereon without amendment and recommend that the bill do
pass.

CONTENTS

I. Text of Reported Bill	2
II. Purpose of the Bill and Summary	3
III. Need for Legislation	3
IV. Hearings	4
V. Committee Consideration	4
VI. Committee Votes	4
VII. Section-by-Section Analysis of H.R. 4203	4
VIII. Congressional Budget Cost Estimate	5
IX. Unfunded Mandates	6
X. New Budget Authority, Entitlement Authority, and Tax Expenditures	6
XI. Oversight Findings	6
XII. Statement of Constitutional Authority	6
XIII. Congressional Accountability Act	6
XIV. Federal Advisory Committee Statement	7
XV. Statement of No Earmarks	7
XVI. Performance Goals and Objectives	7
XVII. Changes in Existing Law Made by the Bill, as Reported	7

I. TEXT OF REPORTED BILL

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 “Women’s Procurement Program Improvement Act of 2012”.

SEC. 2. PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.

Section 8(m) of the Small Business Act (15 U.S.C. 637(m)) is amended—

(1) in paragraph (2)—

(A) by striking subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (D) respectively; and

(C) by striking subparagraph (F), and inserting the following:

“(E) 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) is certified by the Administrator as a small business concern owned and controlled by women.”;

(2) in paragraph (3), by striking “subparagraph (2)(A)” inserting the following: “paragraph (2)(A) or paragraph (7)(A)”;

(3) in paragraph (5) by striking “under paragraph (2)(F)” each place it appears and inserting “under paragraph (2)(E)”;

and

(4) by adding at the end the following:

“(7) **SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESSES.**—In accordance with this section, a contracting officer may award a sole source contract to any small business concern meeting the requirements of section 8(m)(2)(A) of this Act if—

“(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(2)(A) will submit offers;

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

“(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

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

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

“(8) **SOLE SOURCE CONTRACTS FOR WOMEN-OWNED SMALL BUSINESSES IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.**—In accordance with this section, a contracting officer may award a sole source contract to any small business concerns meeting the requirements of section 8(m)(3) of this Act if—

“(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(3) will submit offers;

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

“(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing;

or

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

“(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4203, the “Women’s Procurement Program Improvement Act of 2012,” is to amend the Small Business Act (the Act)¹ to make technical changes to the Women-Owned Small Business (WOSB) Federal Contract Program enacted by Congress in 2000. The specific changes relate to the size of contracts that can be awarded in the program to maintain consistency with similar specialized contracting programs in the Act. Additionally, the legislation provides for the use of sole-source contracts for economically disadvantaged women-owned small businesses and those in substantially underrepresented industries. Further, the legislation alters how small business concerns owned and controlled by women are certified in order to be eligible for the WOSB 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 Small Business Administration’s

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).

(SBA's) Office of Government Contracting and Business Development. The Women-Owned Small Business (WOSB) Federal Contract Program, which this legislation makes technical corrections to, was created in 2000 under § 811 of the Small Business Reauthorization Act of 2000.³ At the time of enactment, limitations on contract award size were placed at \$5,000,000 for manufacturing and \$3,000,000 for all other contracts.

Due to challenges in identifying industries through a study as required under law, the SBA did not implement the final rules on this program until October 2010⁴ and the WOSB program was not fully operational until 2011. Prior to implementation, SBA received comments indicating that limitations on contract award size and the inability to sole-source awards, were inconsistent with other contracting programs administered by the agency and would be problematic to achieving the program's objectives.⁵ However, as these limitations statutory, the SBA could not alter them. H.R. 4206 removes the limitations and aligns the WOSB program with other SBA contracting programs.

IV. HEARINGS

Since changes made in the bill were of a technical nature, no hearings were necessary to address the legislation.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 22, 2012, and ordered H.R. 4203 reported to the House by a voice vote at 11:06 a.m. During the markup, no amendments were offered.

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. 4203.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 4203

SECTION-BY-SECTION ANALYSIS OF H.R. 4203 AS AMENDED

Section 1—Short Title

This section provides that the bill may be cited as the “Women’s Procurement Program Improvement Act of 2012.”

Section 2—Procurement Program for Women-Owned Small Business Concerns

This section removes the contract award limitations found in the WOSB program. Further, this section requires all participants in the WOSB program be certified as a small business concern owned

³The Small Business Reauthorization Act of 2000, § 811, Appendix I to consolidation Appropriations Act, 2001, Publ. L. No. 165–554, 144 Stat. 2763, 2763A–667, 2763A–708–10. The WOSB Program is codified at 15 U.S.C. § 637(m).

⁴Women-Owned Small Business Federal Contract Program; Final Rule, 75 Fed. Reg. 194, 62258 (Oct. 7, 2010).

⁵*Id.*

and controlled by women by either the SBA or entity approved by the Administrator to approve certifications.

Finally, this section provides for sole-source contracts to be awarded under the WOSB program based upon certain restrictions. Specifically, these may be sole-sourced to either economically disadvantaged women-owned small businesses or woman-owned small businesses in substantially underrepresented industries provided that the contract does not exceed \$6.5 million for manufacturing or \$4 million for other contracts, if the contracting officer does not have a reasonable expectation that two or more businesses will submit offers, and that the contract award can be made at a fair and reasonable price.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 16, 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. 4203, the Women's Procurement Program Improvement 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,
Director.

Enclosure.

H.R. 4203—Women's Procurement Program Improvement Act of 2012

H.R. 4203 would expand the federal contracting opportunities for certain small businesses that are owned by women. Specifically, the legislation would permit federal contracting officers to award sole-source contracts, which are awarded in a noncompetitive process, to small businesses that are owned by women who are economically disadvantaged or who own businesses in certain industries where women are considered underrepresented among owners. Under the bill, in order to be eligible to provide services to the federal government, women-owned small businesses would have to be certified of their status by the Small Business Administration (SBA).

Based on information from the SBA and the General Services Administration, CBO estimates that implementing H.R. 4203 would cost about \$5 million per year, assuming appropriation of the necessary amounts. That amount includes the estimated costs to train contracting officers throughout the federal government and for the SBA to administer certifications under the bill. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 4203 would not affect revenues.

H.R. 4203 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. 4203 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. The CBO estimates that it will cost the Federal government \$5 million annually to train contracting officers on the program and to administer the certifications. However, training of federal contracting officers is funded through the Federal Acquisition Institute and Defense Acquisition University, so no additional funding will be required. Likewise, the legislation allows SBA to rely on third party certifications, so the cost of administering certifications should be negligible. Furthermore, the SBA has been operating the program for nearly two years under existing salary and expenses. The Committee sees no reason why continued operation of an extant program will cost the SBA more money than it already does.

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. 4203 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. 4203 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. 4203 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. 4203 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. 4203 includes provisions designed to improve the competitive nature of women-owned small businesses by removing current limits on contract awards, and allowing sole source contracts for economically disadvantaged women-owned small businesses and in substantially underrepresented industries.

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. 8. (a) * * *

* * * * *

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

(1) * * *

(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) * * *

* * * * *

[(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)] (D) 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.]

(E) 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) is certified by the Administrator as a small business concern owned and controlled by women.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive [subparagraph (2)(A)] paragraph (2)(A) or paragraph (7)(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.

* * * * *

(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)] under paragraph (2)(E)); 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)] under paragraph (2)(E).

(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)] under paragraph (2)(E).

* * * * *

(7) SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESSES.—In accordance with this section, a contracting officer may award a sole source contract to any small business concern meeting the requirements of section 8(m)(2)(A) of this Act if—

(A) such concern is determined to be a responsible contract with respect to performance of such contract oppor-

tunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(2)(A) will submit offers;

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

(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

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

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

(8) SOLE SOURCE CONTRACTS FOR WOMEN-OWNED SMALL BUSINESSES IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.—In accordance with this section, a contracting officer may award a sole source contract to any small business concerns meeting the requirements of section 8(m)(3) of this Act if—

(A) such concern is determined to be a responsible contract with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses meeting the requirements of section 8(m)(3) will submit offers;

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

(i) \$6,500,000 in the case of a contract opportunity assigned a standard industrial code for manufacturing; or

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

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

* * * * *