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REPORT
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GREATER OPPORTUNITIES FOR SMALL BUSINESS ACT OF 2014

APRIL 9, 2014.—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. 4093]

The Committee on Small Business, to whom was referred the bill (H.R. 4093) to amend the Small Business Act to raise the prime and subcontract goals, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

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I. AMENDMENT

The amendment is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Greater Opportunities for Small Business Act of 2014".

SEC. 2. SMALL BUSINESS PRIME AND SUBCONTRACT PARTICIPATION GOALS RAISED.

(a) GOALS IN SUBCONTRACTING PLANS.—Section 8(d)(6)(A) of the Small Business Act (15 U.S.C. 637(d)(6)(A)) is amended by inserting after "percentage goals" the following: "of not less than 40 percent".

(b) PRIME CONTRACTING GOALS.—Section 15(g)(1)(A)(i) of the Small Business Act (15 U.S.C. 644(g)(1)(A)(i)) is amended by striking "23 percent" and inserting "25 percent".

(c) DELAYED EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect only beginning on the date on which the Administrator of the Small Business Administration has promulgated any regulations necessary, and the Federal Acquisition Regulation has been revised, to implement section 1614 of the National Defense Authorization Act for Fiscal Year 2014 and the amendments made by such section.

SEC. 3. REPEAL OF CERTAIN PROVISION PERTAINING TO ACCOUNTING OF SUBCONTRACTORS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by striking paragraph (3).

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4093, the "Greater Opportunities for Small Business Act of 2014," is to amend the Small Business Act (the Act)[1] to increase prime contracting and subcontracting opportunities for small businesses. Small business contractors bring necessary competition to the government marketplace, add innovation, and create new jobs. Contracting officers, however, generally prefer contractors with whom they have experience; typically, this preference hampers the ability of small businesses to obtain federal contracts. Thus, the top 100 contractors to the federal government routinely receive 25 percent of the total value of contracts awarded in a fiscal year, whereas the over 350,000 small businesses competing for federal contracts struggle to eclipse the 20 percent mark. This overreliance on a limited corps of contractors is not good for the industrial base, competition, innovation, job creation, or the needs of the federal government.

H.R. 4093 seeks to promote small business contracting in three ways. First, it increases the prime contracting goal for small business concerns[2] from 23 percent of all federal prime contract dollars to 25 percent.[3] Second, it establishes a government-wide small business subcontracting goal of 40 percent, which is necessary due to the continued decline in the administratively set goals for small businesses. Finally, it ensures that no department or agency is allowed to count subcontract awards toward the prime contracting goal.

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[1] Originally, 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, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657s.

[2] The Act uses the term "small business concern." However, this report will use the terms "small business" and "small business concern" interchangeably unless the context requires a specific reference to the term "small business concern."

[3] If contract spending remains constant, this will result in approximately $10 billion in new contracts being awarded to small businesses each year, and if contract spending declines, it will ensure that small businesses are not the first to have their contracts cut.

III. NEED FOR LEGISLATION

The Act finds that awarding prime contracts to small businesses serves the nation in three ways. First, small business contracting is in "the interest of maintaining or mobilizing the Nation's full productive capacity."[4] Second, small business contracting is "in the interest of war or national defense programs."[5] Third, it serves "the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government in each industry category are placed with small-business concerns."[6] To fulfill these three objectives, statutorily based small business goals have been used for approximately thirty-six years.

Since the enactment of Public Law 95–507[7] in 1978, the SBA has been responsible for negotiating small business contracting and subcontracting goals with federal departments and agencies. A decade later, President Reagan signed the Business Opportunity Development Reform Act of 1988 (BODRA), which for the first time established a statutorily mandated government-wide small business goal of "not less than 20 percent of the total value of all prime contract awards for each Fiscal Year."[8] This goal was increased to 23 percent by the Small Business Reauthorization Act of 1997 (SBRA).[9] According to the SBA, in Fiscal Year 2010, small businesses received 22.7 percent of all prime contract dollars, and the Federal Procurement Database currently indicates that the federal government surpassed the 23 percent prime contract goal in FY 2013, with 23.4 percent of prime contract dollars. Therefore, this bill continues the work of the past 36 years by gradually increasing the goal to 25 percent. Each time the goal has previously been increased, small business contracting, with its inherent benefits, has increased. Additionally, given declines in federal contract spending, this expansion will protect small businesses against losing hard-won gains. Thus, after 17 years of a 23 percent goal, the bill will provide additional support for small business contractors.

Public Law 95–507 also sought to increase subcontracting opportunities for small businesses by requiring that other-than-small businesses receiving prime contracts negotiate subcontracting plans with the federal government that would incorporate goals for the use of small businesses.[10] According to Committee reports, this requirement was added because small businesses were receiving only 37.5 percent of subcontract dollars.[11] Since that time, it has been the responsibility of the SBA to establish a government-wide subcontracting goal. However, the current SBA-established goal is 35.9 percent, a 1.6 percent decrease from the actual results thirty-seven years ago that spurred the creation of government-wide subcontracting goals. To prevent further backsliding, the bill establishes the government-wide goal at 40 percent, which like the rise in prime contract dollars represents the Committee's incremental approach to reform, in this area.

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[4] Small Business Act, § 15(a), 15 U.S.C. § 644(a).
[5] *Id.*
[6] *Id.*
[7] This Act has no common name and is simply An Act of October 24, 1978.
[8] Pub. L. No. 100–656, § 502, 102 Stat. 3853, 3881 (1988).
[9] Pub. L. No. 105–135, § 603, 111 Stat. 2592, 2632 (1997).
[10] Pub. L. No. 95–107, § 211, 92 Stat. 1757, 1767 (codified at 15 U.S.C. § 637(d)).
[11] H.R. Rep. No. 95–949, at 5 (1978).

Finally, when the concept of goals was introduced through the 1978 and 1988 legislation, none of the Congressional authors believed that the phrase "the total value of all prime contract awards for each fiscal year" needed further explanation. However, in 1991, the Office of Federal Procurement Policy (OFPP) began permitting[12] the Department of Energy (DOE) to count subcontracts awarded by its management and operations (M&O) contractors as if they were prime contracts awarded by the DOE.[13] This allowed DOE to count 18 percent of its prime contract dollars as being awarded to small businesses until 1999, when OFPP reversed its decision on the M&O contracts,[14] and it became apparent that DOE had only been awarding 3 percent of its prime contract dollars to small businesses. Over a decade later, DOE has shown little inclination to change its contracting processes to allow for small business competition, and in FY 2012 awarded only 5.15 percent of its prime contract dollars to small business concerns.[15]

A provision was recently inserted in the Act to allow DOE to revert to its practice of counting M&O subcontracts towards the prime contracting goal.[16] Authorizing an agency to count contracts towards the incorrect goal distorts the goaling process. Furthermore, the types of goods and services obtained through subcontracts are often not the same as those bought at the prime contract level, thus undermining Congress' intent to ensure that a "fair proportion of the total purchases and contracts for property and services for the government in each industry category are placed with small-business concerns."[17]

Ideally, the changes to the Act will result in $10 billion in new contracting opportunities for small businesses. However, based on President Obama's projected defense spending cuts and cuts that may occur as a result of the Budget Control Act of 2011, small business contracts at the Department of Defense (DoD) are expected to decrease.[18] This does not account for spending cuts at civilian agencies, or the fact that contracting officers find it easier to cut small business contracts than those held by large businesses simply because small businesses lack the clout or resources to contest the decisions of contracting officers. If similar cuts occur at agencies other than DoD, the increased goal in this bill should simply mitigate the effect of the reduced contract spending.

IV. HEARINGS

In the 112th Congress, the Committee held two hearings that examined the prime contract and subcontract goals. On September 14, 2011, the Committee held a hearing titled, "Beyond the Size Standards: The Sustainability of Small Businesses Graduates." At the hearing, witnesses testified that the small business goals are

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[12] OFPP Policy Letter 91–1 (1991).

[13] *See, e.g.,* Acquisition Regulation: Implementation of Section 3021 of the Energy Policy Act of 1992, Notice of Proposed Rulemaking, 60 Fed. Reg. 22,298, 22,302 (May 5, 1995).

[14] OFPP Policy Letter 99–1 (1999) rescinding OFPP Policy Letter 91–1.

[15] SBA, Department of Energy FY2012 Small Business Procurement Scorecard (2013) *available at http://www.sba.gov/sites/default/files/files/FY12-Final-Scorecard-DOE-2013-06-24.pdf.*

[16] Consolidated Appropriations Act, 2014, Pub. L. No. 113–76 Division D Title III, 318, ____ Stat. ____, (2014) *available at http://docs.house.gov/billsthisweek/20140113/CPRT-113-HPRT-RU00-h3547-hamdt2samdt*_xml.pdf.

[17] Small Business Act, § 15(a), 15 U.S.C. § 644(a).

[18] Center for Security Policy, The National Defense Breakdown Economic Impact Report (2012) *available at http://forthecommondefense.org/reports/National%202%20pager%20pdf.pdf.*

not being met, that there are no consequences for this failure, and that the numbers being reported exclude approximately $100 billion in contracts. The Subcommittee on Contracting and the Workforce then met on October 6, 2011, for a hearing titled "Subpar Subcontracting: Challenges for Small Businesses Contractors." In this hearing, the witnesses told the Committee about the declining subcontracting goals, and the lack of commitment to meeting the goals by agencies and some subcontractors. At each hearing, the small business witnesses and the trade associations representing them were adamant that the goals needed to be strengthened.

Since H.R. 4093 is quite similar to H.R. 3850, passed out of Committee in the 112th Congress, the findings of the last Congress are still valid. As a result, no hearings were held on H.R. 4093 during the 113th Congress.

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 5, 2014 and ordered H.R. 4093 reported to the House by a voice vote at 2:24 pm. During the markup, two amendments were offered, neither of which was adopted. Disposition of the amendments is addressed below and is based on the order amendments were filed with the Clerk of the Committee and not necessarily in the order that they were considered at the markup.

Amendment Number One filed by Ms. Chu (D–CA) raised the prime contracting goal for women-owned small businesses from 5 percent to 6 percent. The amendment failed by a vote of 10 ayes to 12 nos at 2:16 pm.

Amendment Number Two filed by Ms. Clarke (D–NY) raised the prime contracting goal for socially and economically disadvantaged businesses from 5 percent to 8 percent. The amendment failed by a vote of 10 ayes to 12 nos at 2:24 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.

FULL COMMITTEE ON SMALL BUSINESS
ROLL CALL

BILL: HR 4093
DATE: March 5, 2014
ROLL CALL: 1
AMENDMENT NUMBER: 1
VOTE: (AYE) 10 (NO) 12

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GRAVES, Chairman		X		
Mr. CHABOT		X		
MR. KING				X
MR. COFFMAN		X		
MR. LUETKEMEYER		X		
MR. MULVANEY		X		
MR. TIPTON		X		
MS. HERRERA BEUTLER		X		
MR. HANNA		X		
MR. HUELSKAMP		X		
MR. SCHWEIKERT		X		
MR. BENTIVOLIO		X		
MR. COLLINS		X		
MR. RICE				X
MS. VELZAQUEZ, RANKING MEMBER	X			
MR. SCHRADER	X			
MS. CLARKE	X			
MS. CHU	X			
MS. HAHN	X			
MR. PAYNE, JR.	X			
MS. MENG	X			
MR. SCHNEIDER				X
MR. BARBER	X			
MS. KUSTER	X			
MR. MURPHY	X			
TOTALS	10	12		

FULL COMMITTEE ON SMALL BUSINESS
ROLL CALL

BILL: HR 4093
DATE: March 5, 2014
ROLL CALL: 2
AMENDMENT NUMBER: 2
VOTE: (AYE) 10 (NO) 12

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GRAVES, Chairman		X		
Mr. CHABOT		X		
MR. KING				X
MR. COFFMAN		X		
MR. LUETKEMEYER		X		
MR. MULVANEY		X		
MR. TIPTON		X		
MS. HERRERA BEUTLER		X		
MR. HANNA		X		
MR. HUELSKAMP				X
MR. SCHWEIKERT		X		
MR. BENTIVOLIO		X		
MR. COLLINS		X		
MR. RICE		X		
MS. VELZAQUEZ, RANKING MEMBER	X			
MR. SCHRADER	X			
MS. CLARKE	X			
MS. CHU	X			
MS. HAHN	X			
MR. PAYNE, JR.	X			
MS. MENG	X			
MR. SCHNEIDER				X
MR. BARBER	X			
MS. KUSTER	X			
MR. MURPHY	X			
TOTALS	10	12		

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 4093

Section 1. Short title

This Section designates the bill as the "Greater Opportunities for Small Business Act of 2014."

Section 2. Small business prime and subcontract participation goals raised

Subsection (a) Goals in subcontracting plans

Section 8(d)(6)(A) of the Small Business Act (15 U.S.C. 637 §(d)(6)(A)) currently requires that all prime contracts exceeding $650,000 ($1.5 million in the case of construction) that are awarded to firms that are other-than-small businesses include negotiated subcontracting plans addressing how the prime contractor will use small businesses. Specifically, it requires that covered prime contractors commit to making a good faith effort to award a certain percentage of subcontract dollars to small business concerns, and that they require the same of any other-than-small subcontractor receiving a subcontract in excess of the aforementioned thresholds.

Subsection (a) amends section 8(d) to set a minimum subcontracting goal of at least 40 percent. This is necessary because the voluntary subcontracting goal established by the Executive Branch has been declining, from 40 percent in fiscal year 2003 to 33.6 percent in fiscal year 2012.[19]

Subsection (b)—Prime contracting goals

Section 15(g)(1)(A)(i) of the Act currently requires the President to annually establish a government-wide goal of awarding at least 23 percent of the total value of prime contracts awards for each fiscal year to small business concerns. This section increases the government-wide goal from 23 percent of the total value of prime contracts awards for each fiscal year to 25 percent of the total value of prime contract awards. It represents the first change in the percentage since 1997. This is necessary to encourage sustained or increased use of small businesses as federal spending decreases, and is further required by the growth of small businesses in the overall economy.

Subsection (c)—Delayed effective date

This section delays implementation of subsection (a) until after the Administrator of the Small Business Administration (Administrator) has promulgated regulations necessary to implement section 1614 of the National Defense Authorization Act for Fiscal Year 2014[20] and the Federal Acquisition Regulation has been revised to reflect those changes. This will allow agencies to capture lower tier contract awards on individual subcontracts.[21]

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[19] SBA, Government-wide 2012 Small Business Procurement Scorecard (2013). Interestingly, in 2003, the goal was 40 percent. *See also* SBA, Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements 6 (2003).

[20] National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113–66 Title XVI Subtitle B §1614 127 Stat. 672 (2013).

[21] While goals are normally apportioned on a contract-by-contract basis, they may also be negotiated at a division or corporate level if the company only sells commercial goods and services, as defined in 48 C.F.R §2.101, and implemented in 48 C.F.R §19.7, They may also be set at the division or corporate level for certain large DoD contractors pursuant to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as authorized in the

Section 3. Repeal of certain provision pertaining to accounting of subcontractors

Section 15(g)(3) of the Act was amended in January 2014, to allow DOE to count small business subcontractors on M&O contracts towards its prime contract goals. Section 3 of the bill strikes this provision in order to maintain a clear delineation between prime and subcontracting goals.

VIII. UNFUNDED MANDATES

H.R. 4093 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.

IX. 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. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that any additional appropriation will be required due to the enactment of H.R. 4093. H.R. 4093 does not direct new spending, but instead addresses the apportionment of current spending between small businesses and other-than-small businesses.

X. 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. 4093 are incorporated into the descriptive portions of this report.

XI. 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.

XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4093 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.

National Defense Authorization Act for Fiscal Years 1990 and 1991, 103 Stat. 1352, Pub. L. 101–189 Part E § 834, 103 Stat. 1352, 1509 (1989) and most recently reauthorized in the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112–81, Title VIII § 866, 125 Stat. 1298, 1526 (2011).

XIII. Federal Advisory Committee Act Statement

H.R. 4093 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.

XIV. Statement of No Earmarks

Pursuant to clause 9 of rule XXI, H.R. 4093 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.

XV. Statement of Duplication of Federal Programs

Pursuant to clause 3(c) of rule XIII of the Rules of the House, no provision of H.R. 4093 establishes or reauthorizes a program of the federal government known to be duplicative of another Federal program, a program that was included in any report from the GAO pursuant to Section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

XVI. Disclosure of Directed Rule Makings

Pursuant to clause 3(c) of rule XIII of the Rules of the House, H.R. 4093 does not direct any rulemaking.

XVII. 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. 4093 includes a number of provisions designed to improve the competitive viability of small businesses as federal prime and subcontractors and to improve agency compliance with the Small Business Act.

XVIII. 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) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals *of not less than 40 percent* for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small busi-

ness 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. 15. (a) * * *

* * * * * * *

(g)

(1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—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:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than [23 percent] *25 percent* of the total value of all prime contract awards for each fiscal year.

* * * * * * *

[(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses 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, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.]

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