

112TH CONGRESS  
1ST SESSION

# S. 633

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2011

Referred to the Committee on Small Business

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## AN ACT

To prevent fraud in small business contracting, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Con-  
3 tracting Fraud Prevention Act of 2011”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “8(a) program” means the pro-  
7 gram under section 8(a) of the Small Business Act  
8 (15 U.S.C. 637(a));

9 (2) the terms “Administration” and “Adminis-  
10 trator” mean the Small Business Administration  
11 and the Administrator thereof, respectively;

12 (3) the terms “HUBZone” and “HUBZone  
13 small business concern” and “HUBZone map” have  
14 the meanings given those terms in section 3(p) of  
15 the Small Business Act (15 U.S.C. 632(p)), as  
16 amended by this Act; and

17 (4) the term “recertification” means a deter-  
18 mination by the Administrator that a business con-  
19 cern that was previously determined to be a qualified  
20 HUBZone small business concern is a qualified  
21 HUBZone small business concern under section  
22 3(p)(5) of the Small Business Act (15 U.S.C.  
23 632(p)(5)).

1 **SEC. 3. FRAUD DETERRENCE AT THE SMALL BUSINESS AD-**  
2 **MINISTRATION.**

3 Section 16 of the Small Business Act (15 U.S.C. 645)  
4 is amended—

5 (1) in subsection (d)—

6 (A) in paragraph (1)—

7 (i) in the matter preceding subpara-  
8 graph (A), by striking “Whoever” and all  
9 that follows through “oneself or another”  
10 and inserting the following: “A person  
11 shall be subject to the penalties and rem-  
12 edies described in paragraph (2) if the per-  
13 son misrepresents the status of any con-  
14 cern or person as a small business concern,  
15 a qualified HUBZone small business con-  
16 cern, a small business concern owned and  
17 controlled by socially and economically dis-  
18 advantaged individuals, a small business  
19 concern owned and controlled by women,  
20 or a small business concern owned and  
21 controlled by service-disabled veterans, in  
22 order to obtain for any person”;

23 (ii) by amending subparagraph (A) to  
24 read as follows:

1           “(A) prime contract, subcontract, grant, or co-  
2           operative agreement to be awarded under subsection  
3           (a) or (m) of section 8, or section 9, 15, 31, or 36;”;

4                       (iii) by striking subparagraph (B);

5                       (iv) by redesignating subparagraphs  
6           (C) and (D) as subparagraphs (B) and  
7           (C), respectively; and

8                       (v) in subparagraph (C), as so redес-  
9           ignated, by striking “, shall be” and all  
10          that follows and inserting a period;

11          (B) in paragraph (2)—

12                      (i) by redesignating subparagraphs  
13          (C) and (D) as subparagraphs (D) and  
14          (E), respectively; and

15                      (ii) by inserting after subparagraph  
16          (B) the following:

17                      “(C) be subject to the civil remedies under sub-  
18          chapter III of chapter 37 of title 31, United States  
19          Code (commonly known as the ‘False Claims Act’);”;  
20          and

21                      (C) by adding at the end the following:

22                      “(3)(A) In the case of a violation of paragraph  
23          (1)(A), (g), or (h), for purposes of a proceeding described  
24          in subparagraph (A) or (C) of paragraph (2), the amount  
25          of the loss to the Federal Government or the damages sus-

1 tained by the Federal Government, as applicable, shall be  
2 an amount equal to the amount that the Federal Govern-  
3 ment paid to the person that received a contract, grant,  
4 or cooperative agreement described in paragraph (1)(A),  
5 (g), or (h), respectively.

6 “(B) In the case of a violation of subparagraph (B)  
7 or (C) of paragraph (1), for the purpose of a proceeding  
8 described in subparagraph (A) or (C) of paragraph (2),  
9 the amount of the loss to the Federal Government or the  
10 damages sustained by the Federal Government, as appli-  
11 cable, shall be an amount equal to the portion of any pay-  
12 ment by the Federal Government under a prime contract  
13 that was used for a subcontract described in subparagraph  
14 (B) or (C) of paragraph (1), respectively.

15 “(C) In a proceeding described in subparagraph (A)  
16 or (B), no credit shall be applied against any loss or dam-  
17 ages to the Federal Government for the fair market value  
18 of the property or services provided to the Federal Govern-  
19 ment.”;

20 (2) by striking subsection (e) and inserting the  
21 following:

22 “(e) Any representation of the status of any concern  
23 or person as a small business concern, a HUBZone small  
24 business concern, a small business concern owned and con-  
25 trolled by socially and economically disadvantaged individ-

1 uals, a small business concern owned and controlled by  
2 women, or a small business concern owned and controlled  
3 by service-disabled veterans, in order to obtain any prime  
4 contract, subcontract, grant, or cooperative agreement de-  
5 scribed in subsection (d)(1) shall be made in writing or  
6 through the Online Representations and Certifications Ap-  
7 plication process required under section 4.1201 of the  
8 Federal Acquisition Regulation, or any successor there-  
9 to.”; and

10 (3) by adding at the end the following:

11 “(g) A person shall be subject to the penalties and  
12 remedies described in subsection (d)(2) if the person mis-  
13 represents the status of any concern or person as a small  
14 business concern, a qualified HUBZone small business  
15 concern, a small business concern owned and controlled  
16 by socially and economically disadvantaged individuals, a  
17 small business concern owned and controlled by women,  
18 or a small business concern owned and controlled by serv-  
19 ice-disabled veterans—

20 “(1) in order to allow any person to participate  
21 in any program of the Administration; or

22 “(2) in relation to a protest of a contract award  
23 or proposed contract award made under regulations  
24 issued by the Administration.

1       “(h)(1) A person that submits a request for payment  
2 on a contract or subcontract that is awarded under sub-  
3 section (a) or (m) of section 8, or section 9, 15, 31, or  
4 36, shall be deemed to have submitted a certification that  
5 the person complied with regulations issued by the Admin-  
6 istration governing the percentage of work that the person  
7 is required to perform on the contract or subcontract, un-  
8 less the person states, in writing, that the person did not  
9 comply with the regulations.

10       “(2) A person shall be subject to the penalties and  
11 remedies described in subsection (d)(2) if the person—

12               “(A) uses the services of a business other than  
13 the business awarded the contract or subcontract to  
14 perform a greater percentage of work under a con-  
15 tract than is permitted by regulations issued by the  
16 Administration; or

17               “(B) willfully participates in a scheme to cir-  
18 cumvent regulations issued by the Administration  
19 governing the percentage of work that a contractor  
20 is required to perform on a contract.”.

21 **SEC. 4. VETERANS INTEGRITY IN CONTRACTING.**

22       (a) DEFINITION.—Section 3(q)(1) of the Small Busi-  
23 ness Act (15 U.S.C. 632(q)(1)) is amended by striking  
24 “means a veteran” and all that follows and inserting the  
25 following: “means—

1           “(A) a veteran with a service-connected  
2           disability rated by the Secretary of Veterans Af-  
3           fairs as zero percent or more disabling; or

4           “(B) a former member of the Armed  
5           Forces who is retired, separated, or placed on  
6           the temporary disability retired list for physical  
7           disability under chapter 61 of title 10, United  
8           States Code.”.

9           (b) VETERANS CONTRACTING.—Section 4 of the  
10          Small Business Act (15 U.S.C. 633) is amended by adding  
11          at the end the following:

12          “(g) VETERAN STATUS.—

13                 “(1) IN GENERAL.—A business concern seeking  
14                 status as a small business concern owned and con-  
15                 trolled by service-disabled veterans shall—

16                         “(A) submit an annual certification indi-  
17                         cating that the business concern is a small busi-  
18                         ness concern owned and controlled by service-  
19                         disabled veterans by means of the Online Rep-  
20                         resentations and Certifications Application  
21                         process required under section 4.1201 of the  
22                         Federal Acquisition Regulation, or any suc-  
23                         cessor thereto; and

24                         “(B) register with—

1           “(i) the Central Contractor Registra-  
2           tion database maintained under subpart  
3           4.11 of the Federal Acquisition Regulation,  
4           or any successor thereto; and

5           “(ii) the VetBiz database of the De-  
6           partment of Veterans Affairs, or any suc-  
7           cessor thereto.

8           “(2) VERIFICATION OF STATUS.—

9           “(A) VETERANS AFFAIRS.—The Secretary  
10          of Veterans Affairs shall determine whether a  
11          business concern registered with the VetBiz  
12          database of the Department of Veterans Af-  
13          fairs, or any successor thereto, as a small busi-  
14          ness concern owned and controlled by veterans  
15          or a small business concern owned and con-  
16          trolled by service-disabled veterans is owned  
17          and controlled by a veteran or a service-disabled  
18          veteran, as the case may be.

19          “(B) FEDERAL AGENCIES GENERALLY.—  
20          The head of each Federal agency shall—

21                 “(i) for a sole source contract award-  
22                 ed to a small business concern owned and  
23                 controlled by service-disabled veterans or a  
24                 contract awarded with competition re-  
25                 stricted to small business concerns owned

1 and controlled by service-disabled veterans  
2 under section 36, determine whether a  
3 business concern submitting a proposal for  
4 the contract is a small business concern  
5 owned and controlled by service-disabled  
6 veterans; and

7 “(ii) use the VetBiz database of the  
8 Department of Veterans Affairs, or any  
9 successor thereto, in determining whether  
10 a business concern is a small business con-  
11 cern owned and controlled by service-dis-  
12 abled veterans.

13 “(3) DEBARMENT AND SUSPENSION.—If the  
14 Administrator determines that a business concern  
15 knowingly and willfully misrepresented that the busi-  
16 ness concern is a small business concern owned and  
17 controlled by service-disabled veterans, the Adminis-  
18 trator may debar or suspend the business concern  
19 from contracting with the United States.”.

20 (c) INTEGRATION OF DATABASES.—The Adminis-  
21 trator for Federal Procurement Policy and the Secretary  
22 of Veterans Affairs shall ensure that data is shared on  
23 an ongoing basis between the VetBiz database of the De-  
24 partment of Veterans Affairs and the Central Contractor

1 Registration database maintained under subpart 4.11 of  
2 the Federal Acquisition Regulation.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by  
5 subsection (b) and the requirements under sub-  
6 section (c) shall take effect on the date on which the  
7 Secretary of Veterans Affairs (referred to in this  
8 subsection as the “Secretary”) publishes in the Fed-  
9 eral Register a determination that the Department  
10 of Veterans Affairs has the necessary resources and  
11 capacity to carry out the additional responsibility of  
12 determining whether small business concerns reg-  
13 istered with the VetBiz database of the Department  
14 of Veterans Affairs are owned and controlled by a  
15 veteran or a service-disabled veteran, as the case  
16 may be, in accordance with subsection (g) of section  
17 4 of the Small Business Act (15 U.S.C. 633), as  
18 added by subsection (b).

19 (2) TIMELINE.—If the Secretary determines  
20 that the Secretary is not able to publish the deter-  
21 mination under paragraph (1) before the date that  
22 is 1 year after the date of enactment of this Act, the  
23 Secretary shall, not later than 1 year after the date  
24 of enactment of this Act, submit a report containing  
25 an estimate of the date on which the Secretary will

1 publish the determination under paragraph (1) to  
2 the Committee on Small Business and Entrepre-  
3 neurship and the Committee on Veterans' Affairs of  
4 the Senate and the Committee on Small Business  
5 and the Committee on Veterans' Affairs of the  
6 House of Representatives.

7 **SEC. 5. SECTION 8(a) PROGRAM IMPROVEMENTS.**

8 (a) REVIEW OF EFFECTIVENESS.—Section 8(a) of  
9 the Small Business Act (15 U.S.C. 637(a)) is amended  
10 by adding at the end the following:

11 “(22) Not later than 3 years after the date of enact-  
12 ment of this paragraph, and every 3 years thereafter, the  
13 Comptroller General of the United States shall—

14 “(A) conduct an evaluation of the effectiveness  
15 of the program under this subsection, including an  
16 examination of—

17 “(i) the number and size of contracts ap-  
18 plied for, as compared to the number received  
19 by, small business concerns after successfully  
20 completing the program;

21 “(ii) the percentage of small business con-  
22 cerns that continue to operate during the 3-year  
23 period beginning on the date on which the small  
24 business concerns successfully complete the pro-  
25 gram;

1           “(iii) whether the business of small busi-  
2           ness concerns increases during the 3-year pe-  
3           riod beginning on the date on which the small  
4           business concerns successfully complete the pro-  
5           gram; and

6           “(iv) the number of training sessions of-  
7           fered under the program; and

8           “(B) submit to the Committee on Small Busi-  
9           ness and Entrepreneurship of the Senate and the  
10          Committee on Small Business of the House of Rep-  
11          resentatives a report regarding each evaluation  
12          under subparagraph (A).”.

13          (b) OTHER IMPROVEMENTS.—In order to improve  
14          the 8(a) program, the Administrator shall—

15                 (1) not later than 90 days after the date of en-  
16                 actment of this Act, begin to—

17                         (A) evaluate the feasibility of—

18                                 (i) using additional third-party data  
19                                 sources;

20                                 (ii) making unannounced visits of  
21                                 sites that are selected randomly or using  
22                                 risk-based criteria;

23                                 (iii) using fraud detection tools, in-  
24                                 cluding data-mining techniques; and

1 (iv) conducting financial and analyt-  
2 ical training for the business opportunity  
3 specialists of the Administration;

4 (B) evaluate the feasibility and advisability  
5 of amending regulations applicable the 8(a) pro-  
6 gram to require that calculations of the ad-  
7 justed net worth or total assets of an individual  
8 include assets held by the spouse of the indi-  
9 vidual; and

10 (C) develop a more consistent enforcement  
11 strategy that includes the suspension or debar-  
12 ment of contractors that knowingly make mis-  
13 representations in order to qualify for the 8(a)  
14 program; and

15 (2) not later than 1 year after the date on  
16 which the Comptroller General submits the report  
17 under section 8(a)(22)(B) of the Small Business  
18 Act, as added by subsection (c), issue, in final form,  
19 proposed regulations of the Administration that—

20 (A) determine the economic disadvantage  
21 of a participant in the 8(a) program based on  
22 the income and asset levels of the participant at  
23 the time of application and annual recertifi-  
24 cation for the 8(a) program; and

1           (B) limit the ability of a small business  
2           concern to participate in the 8(a) program if an  
3           immediate family member of an owner of the  
4           small business concern is, or has been, a partic-  
5           ipant in the 8(a) program, in the same indus-  
6           try.

7 **SEC. 6. HUBZONE IMPROVEMENTS.**

8           (a) PURPOSE.—The purpose of this section is to re-  
9           form and improve the HUBZone program of the Adminis-  
10          tration.

11          (b) IN GENERAL.—The Administrator shall—

12           (1) ensure the HUBZone map is—

13                (A) accurate and up-to-date; and

14                (B) revised as new data is made available  
15           to maintain the accuracy and currency of the  
16           HUBZone map;

17           (2) implement policies for ensuring that only  
18           HUBZone small business concerns determined to be  
19           qualified under section 3(p)(5) of the Small Busi-  
20           ness Act (15 U.S.C. 632(p)(5)) are participating in  
21           the HUBZone program, including through the ap-  
22           propriate use of technology to control costs and  
23           maximize, among other benefits, uniformity, com-  
24           pleteness, simplicity, and efficiency;

1           (3) submit to the Committee on Small Business  
2           and Entrepreneurship of the Senate and the Com-  
3           mittee on Small Business of the House of Rep-  
4           resentatives a report regarding any application to be  
5           designated as a HUBZone small business concern or  
6           for recertification for which the Administrator has  
7           not made a determination as of the date that is 60  
8           days after the date on which the application was  
9           submitted or initiated, which shall include a plan  
10          and timetable for ensuring the timely processing of  
11          the applications; and

12          (4) develop measures and implement plans to  
13          assess the effectiveness of the HUBZone program  
14          that—

15                 (A) require the identification of a baseline  
16                 point in time to allow the assessment of eco-  
17                 nomic development under the HUBZone pro-  
18                 gram, including creating additional jobs; and

19                 (B) take into account—

20                         (i) the economic characteristics of the  
21                         HUBZone; and

22                         (ii) contracts being counted under  
23                         multiple socioeconomic subcategories.

24          (c) EMPLOYMENT PERCENTAGE.—Section 3(p) of the  
25          Small Business Act (15 U.S.C. 632(p)) is amended—

1 (1) in paragraph (5), by adding at the end the  
2 following:

3 “(E) EMPLOYMENT PERCENTAGE DURING  
4 INTERIM PERIOD.—

5 “(i) DEFINITION.—In this subpara-  
6 graph, the term ‘interim period’ means the  
7 period beginning on the date on which the  
8 Administrator determines that a HUBZone  
9 small business concern is qualified under  
10 subparagraph (A) and ending on the day  
11 before the date on which a contract under  
12 the HUBZone program for which the  
13 HUBZone small business concern submits  
14 a bid is awarded.

15 “(ii) INTERIM PERIOD.—During the  
16 interim period, the Administrator may not  
17 determine that the HUBZone small busi-  
18 ness is not qualified under subparagraph  
19 (A) based on a failure to meet the applica-  
20 ble employment percentage under subpara-  
21 graph (A)(i)(I), unless the HUBZone small  
22 business concern—

23 “(I) has not attempted to main-  
24 tain the applicable employment per-

1 centage under subparagraph (A)(i)(I);

2 or

3 “(II) does not meet the applica-  
4 ble employment percentage—

5 “(aa) on the date on which  
6 the HUBZone small business  
7 concern submits a bid for a con-  
8 tract under the HUBZone pro-  
9 gram; or

10 “(bb) on the date on which  
11 the HUBZone small business  
12 concern is awarded a contract  
13 under the HUBZone program.”;  
14 and

15 (2) by adding at the end the following:

16 “(8) HUBZONE PROGRAM.—The term  
17 ‘HUBZone program’ means the program established  
18 under section 31.

19 “(9) HUBZONE MAP.—The term ‘HUBZone  
20 map’ means the map used by the Administration to  
21 identify HUBZones.”.

22 (d) REDESIGNATED AREAS.—Section 3(p)(4)(C)(i) of  
23 the Small Business Act (15 U.S.C. 632(p)(4)(C)(i)) is  
24 amended to read as follows:

1                   “(i) 3 years after the first date on  
2                   which the Administrator publishes a  
3                   HUBZone map that is based on the results  
4                   from the 2010 decennial census; or”.

5 **SEC. 7. ANNUAL REPORT ON SUSPENSION, DEBARMENT,**  
6 **AND PROSECUTION.**

7           The Administrator shall submit an annual report to  
8 the Committee on Small Business and Entrepreneurship  
9 of the Senate and the Committee on Small Business of  
10 the House of Representatives that contains—

11                   (1) the number of debarments from participa-  
12                   tion in programs of the Administration issued by the  
13                   Administrator during the 1-year period preceding  
14                   the date of the report, including—

15                           (A) the number of debarments that were  
16                           based on a conviction; and

17                           (B) the number of debarments that were  
18                           fact-based and did not involve a conviction;

19                   (2) the number of suspensions from participa-  
20                   tion in programs of the Administration issued by the  
21                   Administrator during the 1-year period preceding  
22                   the date of the report, including—

23                           (A) the number of suspensions issued that  
24                           were based upon indictments; and

