

## Calendar No. 198

115TH CONGRESS  
1ST SESSION

# S. 1038

To require the Administrator of the Small Business Administration to submit to Congress a report on the utilization of small businesses with respect to certain Federal contracts.

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### IN THE SENATE OF THE UNITED STATES

MAY 4, 2017

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

AUGUST 2, 2017

Reported by Mr. RISCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To require the Administrator of the Small Business Administration to submit to Congress a report on the utilization of small businesses with respect to certain Federal contracts.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 ~~Congress finds that—~~

1           (1) since the passage of the Budget Control Act  
2           of 2011 (Public Law 112–25; 125 Stat. 240), many  
3           Federal agencies have started favoring longer-term  
4           Federal contracts, including multiple award con-  
5           tracts, over direct individual awards;

6           (2) these multiple award contracts have grown  
7           to more than one-fifth of Federal contract spending;  
8           with the fastest growing multiple award contracts  
9           surpassing \$100,000,000 in obligations for the first  
10          time between 2013 and 2014;

11          (3) in fiscal year 2017, 17 of the 20 largest  
12          Federal contract opportunities are multiple award  
13          contracts;

14          (4) while Federal agencies may choose to use  
15          any or all of the various socio-economic groups on a  
16          multiple award contract, the Small Business Admin-  
17          istration only examines socio-economic performance  
18          through the small business procurement scorecard  
19          and does not examine potential opportunities by  
20          those groups; and

21          (5) Congress and the Department of Justice  
22          have been clear that no individual socio-economic  
23          group shall be given preference over another.

24   **SEC. 2. DEFINITIONS.**

25          In this Act—

1           (1) the term “Administrator” means the Ad-  
 2           ministrator of the Small Business Administration;

3           ~~(2) the term “covered small business concerns”~~  
 4           ~~means—~~

5                       (A) HUBZone small business concerns;

6                       ~~(B) small business concerns owned and~~  
 7                       ~~controlled by service-disabled veterans;~~

8                       (C) small business concerns owned and  
 9                       controlled by women; and

10                      ~~(D) socially and economically disadvan-~~  
 11                      ~~tagged small business concerns, as defined in~~  
 12                      ~~section 8(a)(4)(A) of the Small Business Act~~  
 13                      ~~(15 U.S.C. 637(a)(4)(A)), receiving assistance~~  
 14                      ~~under such section 8(a); and~~

15           ~~(3) the terms “HUBZone small business con-~~  
 16           ~~cern”, “small business concern”, “small business~~  
 17           ~~concern owned and controlled by service-disabled~~  
 18           ~~veterans”, and “small business concern owned and~~  
 19           ~~controlled by women” have the meanings given those~~  
 20           ~~terms in section 3 of the Small Business Act (15~~  
 21           ~~U.S.C. 632).~~

22   **SEC. 3. REPORT.**

23           (a) IN GENERAL.—Not later than 180 days after the  
 24           date of enactment of this Act, the Administrator shall sub-  
 25           mit to the Committee on Small Business and Entrepre-

1 neurship of the Senate and the Committee on Small Busi-  
 2 ness of the House of Representatives a report that in-  
 3 cludes—

4           (1) a determination as to whether small busi-  
 5 ness concerns and each category of covered small  
 6 business concerns described in subparagraphs (A)  
 7 through (D) of section 3(2) are being utilized in a  
 8 significant portion of the Federal market on multiple  
 9 award contracts, including—

10               (A) whether awards are being reserved for  
 11 one or more of those categories; and

12               (B) whether each such category is being  
 13 given the opportunity to perform on multiple  
 14 award contracts;

15           (2) a determination as to whether performance  
 16 requirements for multiple award contracts, as in ef-  
 17 fect on the day before the date of enactment of this  
 18 Act, are feasible and appropriate for small business  
 19 concerns; and

20           (3) any additional information as the Adminis-  
 21 trator may determine necessary.

22       (b) REQUIREMENT.—In making the determinations  
 23 required under subsection (a), the Administrator shall use  
 24 information from multiple award contracts—

- 1           ~~(1) with varied assigned North American Indus-~~  
 2           ~~try Classification System codes; and~~  
 3           ~~(2) that were awarded by not less than eight~~  
 4           ~~Federal agencies.~~

5 **SECTION 1. FINDINGS.**

6       *Congress finds that—*

7           *(1) since the passage of the Budget Control Act*  
 8           *of 2011 (Public Law 112–25; 125 Stat. 240), many*  
 9           *Federal agencies have started favoring longer-term*  
 10          *Federal contracts, including multiple award con-*  
 11          *tracts, over direct individual awards;*

12          *(2) these multiple award contracts have grown to*  
 13          *more than one-fifth of Federal contract spending, with*  
 14          *the fastest growing multiple award contracts sur-*  
 15          *passing \$100,000,000 in obligations for the first time*  
 16          *between 2013 and 2014;*

17          *(3) in fiscal year 2017, 17 of the 20 largest Fed-*  
 18          *eral contract opportunities are multiple award con-*  
 19          *tracts;*

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 21          *or all of the various socio-economic groups on a mul-*  
 22          *tiple award contract, the Small Business Administra-*  
 23          *tion only examines socio-economic performance*  
 24          *through the small business procurement scorecard and*

1        *does not examine potential opportunities by those*  
 2        *groups; and*

3                *(5) Congress and the Department of Justice have*  
 4        *been clear that no individual socio-economic group*  
 5        *shall be given preference over another.*

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7        *In this Act—*

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 9        *istrator of the Small Business Administration;*

10               *(2) the term “covered small business concerns”*  
 11        *means—*

12                        *(A) HUBZone small business concerns;*

13                        *(B) small business concerns owned and con-*  
 14        *trolled by service-disabled veterans;*

15                        *(C) small business concerns owned and con-*  
 16        *trolled by women; and*

17                        *(D) socially and economically disadvan-*  
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 19        *tion 8(a)(4)(A) of the Small Business Act (15*  
 20        *U.S.C. 637(a)(4)(A)), receiving assistance under*  
 21        *such section 8(a); and*

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 2        *terms in section 3 of the Small Business Act (15*  
 3        *U.S.C. 632).*

4    **SEC. 3. REPORT.**

5        *(a) IN GENERAL.—Not later than 180 days after the*  
 6        *date of enactment of this Act, the Administrator shall sub-*  
 7        *mit to the Committee on Small Business and Entrepreneur-*  
 8        *ship of the Senate and the Committee on Small Business*  
 9        *of the House of Representatives a report that includes—*

10            *(1) a determination as to whether small business*  
 11            *concerns and each category of covered small business*  
 12            *concerns described in subparagraphs (A) through (D)*  
 13            *of section 2(2) are being utilized in a significant por-*  
 14            *tion of the Federal market on multiple award con-*  
 15            *tracts, including—*

16                    *(A) whether awards are being reserved for 1*  
 17                    *or more of those categories; and*

18                    *(B) whether each such category is being*  
 19                    *given the opportunity to perform on multiple*  
 20                    *award contracts;*

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 22            *requirements for multiple award contracts, as in ef-*  
 23            *fect on the day before the date of enactment of this*  
 24            *Act, are feasible and appropriate for small business*  
 25            *concerns; and*

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