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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

# H. R.

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To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

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. SHORT TITLE.**

4 This Act may be cited as the “Fairness and Trans-  
5 parency in Contracting Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

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

4           (2) the term “parent company”, relating to a  
5           business concern, means a person other than an in-  
6           dividual that owns not less than 51 percent of that  
7           business concern;

8           (3) the terms “small business concern”, “small  
9           business concern owned and controlled by veterans”,  
10          “small business concern owned and controlled by  
11          service-disabled veterans”, and “small business con-  
12          cern owned and controlled by women” have the  
13          meanings given those terms in section 3 of the Small  
14          Business Act (15 U.S.C. 632), as amended by this  
15          Act; and

16          (4) the term “small business concern owned  
17          and controlled by socially and economically disadvan-  
18          taged individuals” has the meaning given that term  
19          in section 8(d)(3)(C) of the Small Business Act (15  
20          U.S.C. 637(d)(3)(C)).

21 **SEC. 3. PURPOSE.**

22          The purpose of this Act is to modify the definitions  
23          relating to whether a business concern qualifies as a small  
24          business concern to establish additional requirements that  
25          ensure that no publically traded business concern, sub-

1 subsidiary of a publically traded business concern, foreign-  
2 owned business concern, or subsidiary of a foreign-owned  
3 business concern is considered a small business concern  
4 for the purpose of Federal Government contracting and  
5 subcontracting, including for procurement goals.

6 **SEC. 4. DEFINITION OF SMALL BUSINESS CONCERN AND**  
7 **STATUS REVIEW.**

8 Section 3(a) of the Small Business Act (15 U.S.C.  
9 632(a)) is amended by adding at the end the following:

10 “(6) INDEPENDENTLY OWNED AND OPERATED.—

11 “(A) IN GENERAL.—In this subsection, the  
12 term ‘independently owned and operated’ does not  
13 include a business concern—

14 “(i) that is—

15 “(I) an issuer of a class of securities  
16 registered or that is required to be reg-  
17 istered pursuant to section 12 of the Secu-  
18 rities Exchange Act of 1934 (15 U.S.C.  
19 78l) or that is required to file reports pur-  
20 suant to section 15(d) of that Act (15  
21 U.S.C. 78o(d)); or

22 “(II) owned by an issuer of a class of  
23 securities registered or that is required to  
24 be registered pursuant to section 12 of the  
25 Securities Exchange Act of 1934 (15

1 U.S.C. 781) or that is required to file re-  
2 ports pursuant to section 15(d) of that Act  
3 (15 U.S.C. 78o(d)); or

4 “(ii) more than 50 percent of which is  
5 owned, directly or indirectly, by one or more in-  
6 dividuals that are not United States citizens.

7 “(B) ENTITIES.—In determining ownership of  
8 a business concern, any interest in the business con-  
9 cern that is owned by a person that is not an indi-  
10 vidual (including a corporation, partnership, estate,  
11 or trust) shall be considered owned proportionately  
12 by or for the individuals that own that person.”.

13 **SEC. 5. NOTIFICATION.**

14 (a) IN GENERAL.—Not later than 6 months after the  
15 date of enactment of this Act, the Administrator shall no-  
16 tify the head of each Federal department or agency re-  
17 garding this Act and the amendments made by this Act.

18 (b) TO CONTRACTORS.—Not later than 6 months  
19 after receiving notice under subsection (a), the head of a  
20 Federal department or agency shall notify any contractor  
21 of that department or agency regarding this Act and the  
22 amendments made by this Act.

23 **SEC. 6. REPORTING.**

24 (a) IN GENERAL.—Not later than 6 months after the  
25 end of each fiscal year, the Administrator shall publish

1 a report regarding prime contracts with the Federal Gov-  
2 ernment awarded to business concerns that were identified  
3 as small business concerns for the purposes of achieving  
4 the small business contracting goals of the Federal Gov-  
5 ernment during the previous fiscal year.

6 (b) CONTENTS.—

7 (1) IN GENERAL.—Each report under sub-  
8 section (a) shall, for the fiscal year before the year  
9 in which that report is published, include—

10 (A) the name of each small business con-  
11 cern, small business concern owned and con-  
12 trolled by socially and economically disadvan-  
13 taged individuals, small business concern owned  
14 and controlled by women, small business con-  
15 cern owned and controlled by veterans, and  
16 small business concern owned and controlled by  
17 service-disabled veterans that was awarded a  
18 prime contract with the Federal Government;  
19 and

20 (B) for each small business concern de-  
21 scribed in subparagraph (A), the total dollar  
22 amount of prime contracts with the Federal  
23 Government awarded to that small business  
24 concern in descending order.

1           (2) PARENT COMPANIES.—If a small business  
2           concern described in paragraph (1)(A) has a parent  
3           company, the Administrator shall report information  
4           relating to any prime contract with the Federal gov-  
5           ernment of that small business concern under the  
6           name of that parent company.

7           (c) AVAILABILITY.—The Administrator shall make  
8           each report under subsection (a) available on the website  
9           of the Administration in a manner that is easily accessible  
10          by members of the public.

11 **SEC. 7. LIST OF CONTRACTORS.**

12          (a) IN GENERAL.—Each Federal department and  
13          agency shall publish on the website of that department or  
14          agency a list of each business concern that received a con-  
15          tract award because that business concern was identified  
16          as a small business concern.

17          (b) LIST CONTENTS.—A list published under sub-  
18          section (a) shall—

19                (1) list business concerns in the order of the  
20                total amount in dollars of contracts between the  
21                Federal Government and that business concern, be-  
22                ginning with the largest total value;

23                (2) include the total amount in dollars of con-  
24                tracts between the Federal Government and each  
25                business concern on such list; and

1           (3) include the name of any parent company of  
2           a business concern on such list.

3 **SEC. 8. CONTRACTING DATABASES.**

4           The Administrator shall, by regulation, establish pro-  
5 cedures to ensure that the Central Contractor Registration  
6 database and any successor database provide an adequate  
7 warning regarding criminal penalties established under  
8 section 16(d) of the Small Business Act (15 U.S.C.  
9 645(d)) for misrepresenting the status of a business con-  
10 cern or person in order to obtain certain contracts with  
11 the Federal Government.

12 **SEC. 9. ENFORCEMENT.**

13           (a) COMPLAINTS.—

14           (1) IN GENERAL.—Any person may file a com-  
15 plaint with the Administrator and the head of the  
16 affected department or agency about the classifica-  
17 tion of a business concern as a small business con-  
18 cern and the Administrator and the head of the af-  
19 fected department or agency shall resolve any com-  
20 plaint filed under this paragraph in a timely man-  
21 ner.

22           (2) REPORTS.—The Administrator shall annu-  
23 ally submit to Congress a report describing any com-  
24 plaints described in paragraph (1) that were filed

1       during the relevant year and the resolution of any  
2       such complaint.

3       (b) DEBARMENT.—The head of each Federal depart-  
4       ment or agency shall issue or amend the contracting rules  
5       and regulations for that department or agency to ensure  
6       that a business concern shall be debarred from receiving  
7       a Federal contract for a period of not less than 5 years  
8       if that business concern—

9               (1) fraudulently represents that it is a small  
10       business concern as part of a bid for a small busi-  
11       ness contract with that department or agency; or

12               (2) violates this Act or an amendment made by  
13       this Act.