

Calendar No. 624

107TH CONGRESS
2^D SESSION**S. 1994****[Report No. 107-294]**

To establish a priority preference among certain small business concerns for purposes of Federal contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2002

Mr. KERRY (for himself and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

OCTOBER 1, 2002

Reported by Mr. KERRY, with amendments

[Omit the part struck through and insert the part printed in *italie*]**A BILL**

To establish a priority preference among certain small business concerns for purposes of Federal contracts, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combined 8(a) and
5 HUBZone Priority Preference Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act the following definitions shall apply:

3 (1) **CONTRACTING OFFICER.**—The term “con-
4 tracting officer” has the same meaning as in section
5 27(f)(5) of the Office of Federal Procurement Policy
6 Act (41 U.S.C. 423(f)(5)).

7 (2) **8(a) HUBZONE SMALL BUSINESS CON-**
8 **CERN.**—The term “8(a) HUBZone small business
9 concern” means a qualified HUBZone small busi-
10 ness concern that is also a section 8(a) small busi-
11 ness concern.

12 (3) **QUALIFIED HUBZONE SMALL BUSINESS**
13 **CONCERN.**—The term “qualified HUBZone small
14 business concern” has the same meaning as in sec-
15 tion 3(p)(5) of the Small Business Act (15 U.S.C.
16 632(p)(5)).

17 (4) **SECTION 8(a) SMALL BUSINESS CON-**
18 **CERN.**—The term “section 8(a) small business con-
19 cern” means a small business concern that is cer-
20 tified by the Small Business Administration as eligi-
21 ble to receive benefits under section 8(a) of the
22 Small Business Act (15 U.S.C. 637(a)).

23 (5) **SMALL BUSINESS CONCERN.**—The term
24 “small business concern” has the same meaning as
25 in section 3(a) of the Small Business Act (15 U.S.C.
26 632(a)).

(6) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the same meaning as in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A)).

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

“(9) BEST VALUE CONTRACT.—The term ‘best value contract’ means a contract that includes factors or subfactors unrelated to cost or price under section 2305(a)(2)(A) of title 10, United States Code, or section 303A(b)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(b)(1)).

“(10) BEST VALUE FACTOR RELATIVE IMPORTANCE.—The term ‘best value factor relative importance’ means the relative importance assigned to the factors or subfactors in a best value contract.

“(11) CONTRACTING OFFICER.—The term ‘contracting officer’ has the same meaning as in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

“(12) 8(a) HUBZONE SMALL BUSINESS CONCERN.—The term ‘8(a) HUBZone small business concern’ means a qualified HUBZone small business concern that is also a section 8(a) small business concern.

“(13) SECTION 8(a) SMALL BUSINESS CONCERN.—The term ‘section 8(a) small business concern’ means a small business concern that is certified by the Administration as eligible to receive benefits under section 8(a).”.

1 **SEC. 3. ESTABLISHMENT OF PRIORITY PREFERENCE.**

2 (a) EFFECT OF PRIORITY PREFERENCE ON RE-
3 STRICTED COMPETITION CONTRACTS.—

4 (1) SECTION 8(a) CONTRACTS.—In determining
5 the successful offeror for a restricted competition
6 contract under section 8(a)(1)(D) of the Small Busi-
7 ness Act (15 U.S.C. 637(a)(1)(D)), the contracting
8 officer shall select an offer from an 8(a) HUBZone
9 small business concern over a comparable offer from
10 a section 8(a) small business concern that is not a
11 qualified HUBZone small business concern.

12 (2) HUBZONE CONTRACTS.—In determining
13 the successful offeror for a restricted competition
14 contract under section 31(b)(2)(B) of the Small
15 Business Act (15 U.S.C. 657a(b)(2)(B)), the con-

tracting officer shall select an offer from an 8(a) HUBZone small business concern over a comparable offer from a qualified HUBZone small business concern that is not a section 8(a) small business concern.

(b) EFFECT OF PRIORITY PREFERENCE ON PRICE

EVALUATION PREFERENCE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), in any case in which a Federal procurement contract is to be awarded on the basis of full and open competition in accordance with section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), the price offered by an 8(a) HUBZone small business concern shall be deemed as being lower than the price offered by another offeror, if the price offered by the 8(a) HUBZone small business concern is not more than 20 percent higher than the price offered by the otherwise lowest and responsive offeror.

(2) OTHER SMALL BUSINESS CONCERN.—If the competing offeror under paragraph (1) is a small business concern, the price evaluation preference given to the 8(a) HUBZone small business concern shall be 10 percent.

(3) **RESPONSIVE OFFER.**—An 8(a) HUBZone small business concern shall not receive a price evaluation preference under this section if it does not make a responsive offer.

(e) **EXCLUSION.**—This section does not provide any priority preference to a small business concern owned and controlled by socially and economically disadvantaged individuals that is also a qualified HUBZone small business concern, unless such business has been certified by the Small Business Administration as eligible to receive benefits under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(a) **SECTION 8(a) CONTRACTS.**—Section 8(a)(1)(D) of the Small Business Act (15 U.S.C. 637(a)(1)(D)) is amended by adding at the end the following:

“(iii) If a contract to be awarded by competition restricted to eligible Program Participants will be awarded as a best value contract, the contract shall include an evaluation factor for a bidding Program Participant that is also a qualified HUBZone small business concern. Such factor shall not be assigned a best value factor relative importance that exceeds 10 percent of the best value factor relative importance assigned to price as an evaluation factor.”.

(b) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—Section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)) is amended to read as follows:

“(B) a contract opportunity shall not be awarded under this section on the basis of competition restricted to qualified HUBZone small business concerns, unless—

“(i) the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers;

“(ii) the award can be made at a fair market price;

“(iii) if the contract will be awarded as a best value contract, the contract includes an evaluation factor for a bidding qualified HUBZone small business concern that is also eligible to receive benefits under section 8(a); and

“(iv) the evaluation factor included under clause (iii) is not assigned a best value factor relative importance that exceeds 10 percent of the best value factor relative importance assigned to price as an evaluation factor.”.

(c) EFFECT ON PRICE EVALUATION PREFERENCE.—

Section 31(b)(3) of the Small Business Act (15 U.S.C. 657a(b)(3)) is amended by adding at the end the following:

“(D) EFFECT ON PRICE EVALUATION PREFERENCE.—

“(i) COMBINED PREFERENCE WITH 8(a) FIRMS.—Subject to clauses (ii) and (iii), in any case in which a Federal contract is to be awarded on the basis of full and open competition in accordance with section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), the price offered by an 8(a) HUBZone small business concern shall be deemed as lower than the price offered by another offeror, if the price offered by the 8(a) HUBZone small business concern is not more than 12 percent higher than the price offered by the otherwise lowest and responsive offeror.

“(ii) OTHER SMALL BUSINESS CONCERN.—If the competing offeror under clause (i) is a small business concern, the price evaluation preference given to the

8(a) HUBZone small business concern shall be 10 percent.

“(iii) RESPONSIVE OFFER.—An 8(a) HUBZone small business concern shall not receive a price evaluation preference under this subparagraph if it does not make a responsive offer.

“(iv) EXCLUSION.—This subparagraph does not provide any additional price evaluation preference to a small business concern owned and controlled by socially and economically disadvantaged individuals that is also a qualified HUBZone small business concern, unless such business has been certified by the Small Business Administration as eligible to receive benefits under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”.

SEC. 4. HUBZONE SMALL BUSINESS CONCERNS.

Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended—

- (1) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8), respectively; and
- (2) by inserting after paragraph (3) the following:

“(4) RULE OF CONSTRUCTION RELATING TO
CITIZENSHIP.—

“(A) IN GENERAL.—A small business concern described in subparagraph (B) meets the United States citizenship requirement of paragraph (3)(A) if, at the time of application by the concern to become a qualified HUBZone small business concern for purposes of any contract and at such times as the Administrator shall require, non-citizens do not constitute more than 15 percent of the beneficial ownership of the outstanding shares of that small business concern, as measured by disclosures filed under section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)).

“(B) CONCERNS DESCRIBED.—A small business concern is described in this subparagraph if the small business concern—

“(i) has a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); and

“(ii) files reports with the Securities and Exchange Commission as a small business issuer.

1 “(i) any other person that is not orga-
2 nized under the laws of any State or the
3 United States.”.

4 **SEC. 4. 5. MODIFICATION OF SOLE SOURCE THRESHOLDS.**

5 (a) SECTION 8(a) SMALL BUSINESS CONCERN.—Sec-
6 tion 8(a)(1)(D)(i)(II) of the Small Business Act (15
7 U.S.C. 637(a)(1)(D)(i)(II)) is amended—

8 (1) by striking “\$5,000,000” and inserting
9 “\$6,000,000”; and

10 (2) by striking “\$3,000,000” and inserting
11 “\$4,000,000”.

12 (b) QUALIFIED HUBZONE SMALL BUSINESS CON-
13 CERN.—Section 31(b)(2)(A)(ii) of the Small Business Act
14 (15 U.S.C. 657a(b)(2)(A)(ii)) is amended—

15 (1) in subclause (I), by striking “\$5,000,000”
16 and inserting “\$6,000,000”; and

17 (2) in subclause (II), by striking “\$3,000,000”
18 and inserting “\$4,000,000”.