

116TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

{ REPORT
{ 116-???

WILLIAM M. (MAC) THORNBERRY
NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2021

CONFERENCE REPORT

TO ACCOMPANY

H.R. 6395



DECEMBER --, 2020.—Ordered to be printed

1 (B) in paragraph (4)(C)(ix), by striking
2 “and American Samoa” and inserting “Amer-
3 ican Samoa, and the Commonwealth of the
4 Northern Mariana Islands”; and

5 (2) in section 34(a)(9), by striking “and Amer-
6 ican Samoa” and inserting “American Samoa, and
7 the Commonwealth of the Northern Mariana Is-
8 lands”.

9 **SEC. 868. PAST PERFORMANCE RATINGS OF CERTAIN**
10 **SMALL BUSINESS CONCERNS.**

11 (a) PAST PERFORMANCE RATINGS OF JOINT VEN-
12 TURES FOR SMALL BUSINESS CONCERNS.—Section 15(e)
13 of the Small Business Act (15 U.S.C. 644(e)) is amended
14 by adding at the end the following new paragraph:

15 “(5) PAST PERFORMANCE RATINGS OF JOINT
16 VENTURES FOR SMALL BUSINESS CONCERNS.—With
17 respect to evaluating an offer for a prime contract
18 made by a small business concern that previously
19 participated in a joint venture with another business
20 concern (whether or not such other business concern
21 was a small business concern), the Administrator
22 shall establish regulations—

23 “(A) allowing the small business concern
24 to elect to use the past performance of the joint

1 venture if the small business concern has no
2 relevant past performance of its own;

3 “(B) requiring the small business concern,
4 when making an election under subparagraph
5 (A)—

6 “(i) to identify to the contracting offi-
7 cer the joint venture of which the small
8 business concern was a member; and

9 “(ii) to inform the contracting officer
10 what duties and responsibilities the small
11 business concern carried out as part of the
12 joint venture; and

13 “(C) requiring a contracting officer, if the
14 small business concern makes an election under
15 subparagraph (A), to consider the past per-
16 formance of the joint venture when evaluating
17 the past performance of the small business con-
18 cern, giving due consideration to the informa-
19 tion provided under subparagraph (B)(ii).”.

20 (b) PAST PERFORMANCE RATINGS OF FIRST-TIER
21 SMALL BUSINESS SUBCONTRACTORS.—Section 8(d)(17)
22 of the Small Business Act (15 U.S.C. 637(d)(17)) is
23 amended to read as follows:

24 “(17) PAST PERFORMANCE RATINGS FOR CER-
25 TAIN SMALL BUSINESS SUBCONTRACTORS.—Upon

1 request by a small business concern that performed
2 as a first tier subcontractor on a covered contract
3 (as defined in paragraph (13)(A)), the prime con-
4 tractor for such covered contract shall submit to
5 such small business concern a record of past per-
6 formance for such small business concern with re-
7 spect to such covered contract. If a small business
8 concern elects to use such record of past perform-
9 ance, a contracting officer shall consider such record
10 of past performance when evaluating an offer for a
11 prime contract made by such small business con-
12 cern.”.

13 (c) RULEMAKING.—Not later than 120 days after the
14 date of the enactment of this Act, the Administrator of
15 the Small Business Administration shall issue rules to
16 carry out this section and the amendments made by this
17 section.

18 **SEC. 869. EXTENSION OF PARTICIPATION IN 8(A) PROGRAM.**

19 (a) IN GENERAL.—The Administrator of the Small
20 Business Administration shall ensure that a small busi-
21 ness concern participating in the program established
22 under section 8(a) of the Small Business Act (15 U.S.C.
23 637) on or before September 9, 2020, may elect to extend
24 such participation by a period of 1 year, regardless of
25 whether such concern previously elected to suspend par-