

professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85-536, § 2[13], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

§ 643. Fair charge for use of Government-owned property

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85-536, § 2[14], July 18, 1958, 72 Stat. 395.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85-536, and are classified to section 644 of this title. See Codification note set out under section 631 of this title.

§ 644. Awards or contracts

(a) Determination

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or

contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire

domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41.

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 632(e) of this title.

(C) The term "handicapped individual" has the same meaning given such term in section 632(f) of this title.

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a con-

tract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) Priority

For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) Procurement strategies; contract bundling

(1) In general

To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.

(2) Market research

(A) In general

Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) Factors

For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as

compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- (i) Cost savings.
- (ii) Quality improvements.
- (iii) Reduction in acquisition cycle times.
- (iv) Better terms and conditions.
- (v) Any other benefits.

(C) Reduction of costs not determinative

The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3) Strategy specifications

If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

- (A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;
- (B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and
- (C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(4) Contract teaming

In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

(f) Repealed. Pub. L. 103-355, title VII, § 7101(a), Oct. 13, 1994, 108 Stat. 3367

(g) Goals for participation of small business concerns in procurement contracts

(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service disabled¹ veterans, qualified HUBZone small

business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract and subcontract awards for fiscal year 2003 and each fiscal year thereafter. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

(2)(A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency.

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and

¹ So in original. Probably should be "service-disabled".

shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(D) For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women.

(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D), shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(h) Reports to Administration; submittal of information to Congress

(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section.

(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Busi-

ness of the House of Representatives the compilation and analysis, which shall include the following:

(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women and the performance in attaining such goals.

(B) The goals in effect for each agency and the agency's performance in attaining such goals.

(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

(D) The number and dollar value of contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women through—

(i) noncompetitive negotiation,

(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

(iii) competition restricted to small business concerns, qualified HUBZone small business concerns, and

(iv) unrestricted competitions,

for each agency and on a Government-wide basis.

(E) The number and dollar value of subcontracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(F) The number and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by women.

(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 631b(a) of this title.

(i) Small business set-asides

Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater

than \$2,500 but not greater than \$100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 637 of this title, section 2323 of title 10, section 712² of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

(k) Office of Small and Disadvantaged Business Utilization; Director

There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency who shall—

(1) be known as the "Director of Small and Disadvantaged Business Utilization" for such agency,

(2) be appointed by the head of such agency,

(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee,

(4) be responsible for the implementation and execution of the functions and duties under this section and section 637 of this title which relate to such agency,

(5) identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation,

(7) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under this section and section 637 of this title,

(8) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to this section and section 637 of this title,

(9) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection, and

(10) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) of this section, or section 637(a) of this title or section 2323 of title 10. Such recommendations shall be made with due regard to the requirements of subsection (m) of this section, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

This subsection shall not apply to the Administration.

(l) Breakout procurement center representatives

(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section.

(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when ap-

² See References in Text note below.

appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(3) A breakout procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a) of this section.

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6) of this section.

(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

(i) full-time employees of the Administration; and

(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.

(7)(A) At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) The breakout procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(m) Relationship to other procurement programs

(1) Each agency subject to the requirements of section 2323 of title 10 shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of³ dollar value of contracts awarded pursuant to this section and section 637(a) of this title in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 637(a) of this title.

(2) All procurement center representatives (including those referred to in subsection (k)(6) of this section), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 637(a) of this title, and section 2323 of title 10.

³ So in original. Probably should be "or".

(n) Determination of labor surplus areas

For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) Requirements for performance of contracts by employees of small business concerns

(1) A concern may not be awarded a contract under subsection (a) of this section as a small business concern unless the concern agrees that—

(A) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(3) The Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (2).

(p) Database, analysis, and annual report with respect to bundled contracts**(1) Bundled contract defined**

In this subsection, the term “bundled contract” has the meaning given such term in section 632(o)(1) of this title.

(2) Database**(A) ⁴ In general**

Not later than 180 days after December 21, 2000, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) Analysis

For each bundled contract that is to be re-competed as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e) of this sec-

tion) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) Annual report on contract bundling**(A) In general**

Not later than 1 year after December 21, 2000, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

(B) Contents

Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(ii) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

(cc) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements complied with the contracting agency’s small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

(5) Access to data**(A) Federal procurement data system**

To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency

⁴ So in original. No subpar. (B) has been enacted.

shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q) Bundling accountability measures

(1) Teaming requirements

Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(2) Policies on reduction of contract bundling

(A) In general

Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) Rationale for contract bundling

Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

(3) Reporting

Not later than 90 days after September 27, 2010, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r) Multiple award contracts

Not later than 1 year after September 27, 2010, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns,

including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10 and section 4106(c) of title 41, set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(Pub. L. 85-536, §2[15], July 18, 1958, 72 Stat. 395; Pub. L. 95-89, title V, §502, Aug. 4, 1977, 91 Stat. 562; Pub. L. 95-507, title II, §§221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772; Pub. L. 96-302, title I, §§116, 117, July 2, 1980, 94 Stat. 839; Pub. L. 98-577, title IV, §403(a), Oct. 30, 1984, 98 Stat. 3080; Pub. L. 99-272, title XVIII, §18003(a), Apr. 7, 1986, 100 Stat. 363; Pub. L. 99-500, §101(c) [title X, §903(d), 921(a), (b)(1), (c)(2)-(e), 922(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-132, 1783-147 to 1783-149, 1783-152, and Pub. L. 99-591, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)-(e), 922(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-132, 3341-147 to 3341-149, 3341-152; Pub. L. 99-661, div. A, title IX, formerly title IV, §§903(d), 921(a), (b)(1), (c)(2)-(e), 922(c), Nov. 14, 1986, 100 Stat. 3912, 3926-3928, 3932, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §10(a)(1), (b)(1), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-180, div. A, title VIII, §809(a)-(c), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 100-496, §12, Oct. 17, 1988, 102 Stat. 2465; Pub. L. 100-590, title I, §§110, 133(a), Nov. 3, 1988, 102 Stat. 2994, 3005; Pub. L. 100-656, title V, §§502, 503, title VI, §§601, 603, Nov. 15, 1988, 102 Stat. 3881, 3887, 3888; Pub. L. 101-37, §§19, 21, June 15, 1989, 103 Stat. 74, 75; Pub. L. 101-510, div. A, title VIII, §806(e)(3), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101-574, title II, §208, Nov. 15, 1990, 104 Stat. 2820; Pub. L. 102-190, div. A, title VIII, §806(d), Dec. 5, 1991, 105 Stat. 1419; Pub. L. 102-366, title II, §232(b), Sept. 4, 1992, 106 Stat. 1002; Pub. L. 102-484, div. A, title VIII, §801(h)(8), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102-569, title IX, §911(b), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103-355, title IV, §4004, title VII, §§7101(a), 7106(a), Oct. 13, 1994, 108 Stat. 3338, 3367, 3374; Pub. L. 103-403, title III, §305, Oct. 22, 1994, 108 Stat. 4189; Pub. L. 104-106, div. D, title XLIII, §4321(c)(3), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105-135, title IV, §413, title VI, §603(b), Dec. 2, 1997, 111 Stat. 2618, 2632; Pub. L. 106-50, title V, §502, title VI, §601, Aug. 17, 1999, 113 Stat. 247, 248; Pub. L. 106-554, §1(a)(9) [title VIII, §§806(a), 810], Dec. 21, 2000, 114 Stat. 2763, 2763A-706; Pub. L. 111-240, title I, §§1312(a), (b), 1331, 1333, 1346, 1347(b)(2), Sept. 27, 2010, 124 Stat. 2537, 2541, 2542, 2546, 2547.)

REFERENCES IN TEXT

Section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), referred to in subsec. (j)(3), was repealed by Pub. L. 111-240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (j)(3), is section 7102 of Pub. L. 103-355, which is set out below.

CODIFICATION

In subsec. (c)(1)(A), “section 8502 of title 41” substituted for “the first section of the Act entitled ‘An Act to create a Committee on Purchases of Blind-made Products, and for other purposes’, approved June 25, 1938 (41 U.S.C. 46)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(2)(B), “section 8503 of title 41” substituted for “section 2 of the Act entitled ‘An Act to create a Committee on Purchases of Blind-made Products, and for other purposes’, approved June 25, 1938 (41 U.S.C. 47)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (q)(2)(A), “section 1302(a) of title 41” substituted for “section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a))” and “section 1303(a) of title 41” substituted for “section 25 of such Act” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (r)(2), “section 4106(c) of title 41” substituted for “section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 214 of act July 30, 1953, ch. 282, title II, 67 Stat. 238, as amended by act Aug. 9, 1955, ch. 628, §9, 69 Stat. 551, which was previously classified to section 643 of this title. The provisions of section 215 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85-536, and are classified to section 639 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2010—Subsec. (g)(1). Pub. L. 111-240, §1347(b)(2), inserted “and subcontract” before “awards for fiscal year 2003” in fourth sentence.

Pub. L. 111-240, §1312(b), substituted “Administrator for Federal Procurement Policy” for “Administrator of the Office of Federal Procurement Policy”.

Subsec. (g)(2). Pub. L. 111-240, §1333, designated first to fifth sentences as subpars. (A) to (E), respectively, substituted “the participation described in subparagraph (D)” for “such participation” in subpar. (E), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (E), and added subpar. (F).

Pub. L. 111-240, §1312(b), substituted “Administrator for Federal Procurement Policy” for “Administrator of the Office of Federal Procurement Policy”.

Subsec. (h)(2). Pub. L. 111-240, §1346, in introductory provisions, substituted “submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:” for “submit them to the President and the Congress. The Administration’s submission to the President shall include the following:”.

Subsec. (q). Pub. L. 111-240, §1312(a), added subsec. (q).

Subsec. (r). Pub. L. 111-240, §1331, added subsec. (r).

2000—Subsec. (a). Pub. L. 106-554, §1(a)(9) [title VIII, §806(a)], in eighth sentence, substituted “definition of a ‘United States industry’ under the North American Industry Classification System, as established” for “four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published”.

Subsec. (p). Pub. L. 106-554, §1(a)(9) [title VIII, §810], added subsec. (p).

1999—Subsec. (g)(1). Pub. L. 106-50, §502(a)(3), inserted “small business concerns owned and controlled by serv-

ice-disabled veterans,” after “the maximum practicable opportunity for small business concerns,” in penultimate sentence.

Pub. L. 106-50, §502(a)(2), inserted after second sentence “The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.”

Pub. L. 106-50, §502(a)(1), inserted “small business concerns owned and controlled by service disabled veterans,” after “small business concerns,” the first place appearing in first sentence.

Subsec. (g)(2). Pub. L. 106-50, §502(b)(3), inserted “small business concerns owned and controlled by service-disabled veterans, by” after “including participation by” in fourth sentence.

Pub. L. 106-50, §502(b)(2), inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns,” the first place appearing in second sentence.

Pub. L. 106-50, §502(b)(1), inserted “by small business concerns owned and controlled by service-disabled veterans,” after “small business concerns,” the first place appearing in first sentence.

Subsec. (h)(1). Pub. L. 106-50, §601(a), inserted “small business concerns owned and controlled by veterans (including service-disabled veterans),” after “small business concerns,” the first place appearing.

Subsec. (h)(2). Pub. L. 106-50, §601(b)(1), inserted “and the Congress” before period at end of first sentence in introductory provisions.

Subsec. (h)(2)(A), (D), (E). Pub. L. 106-50, §601(b)(2), inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns,” the first place appearing.

1997—Subsec. (a). Pub. L. 105-135, §413(b), in third sentence, inserted “or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration,” after “discrete construction projects,” substituted “(4)” for “or (4)”, and inserted before period at end “, or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified”.

Subsec. (e). Pub. L. 105-135, §413(a), added subsec. (e).

Subsec. (g)(1). Pub. L. 105-135, §603(b)(1), inserted “qualified HUBZone small business concerns,” after “small business concerns,” in two places, substituted “not less than 23 percent of the total value” for “not less than 20 percent of the total value”, and inserted after second sentence “The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter.”

Subsec. (g)(2). Pub. L. 105-135, §603(b)(2)(B), (C), inserted “qualified HUBZone small business concerns,” after “small business concerns,” in second sentence and substituted “by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women” for “by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals and participation by small business concerns owned and controlled by women” before period at end of fourth sentence.

Pub. L. 105-135, §603(b)(2)(A), which directed substitution of “, by qualified HUBZone small business concerns, by small business concerns owned and controlled

by socially and economically disadvantaged individuals” for “, by small business concerns owned and controlled by socially and economically disadvantaged individuals” in first sentence, was executed by making the insertion for the quoted language which started with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104-106, §4321(c)(3). See 1996 Amendment note below.

Subsec. (h). Pub. L. 105-135, §603(b)(3), inserted “qualified HUBZone small business concerns,” after “small business concerns,” wherever appearing.

Subsec. (k)(5) to (10). Pub. L. 105-135, §413(c)(1), (2), added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1996—Subsec. (g)(2). Pub. L. 104-106 struck out second comma after “goals for the participation by small business concerns.”

1994—Subsec. (c)(2)(A). Pub. L. 103-403, §305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “During each of fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year as follows: In 1989 not more than \$30,000,000, in 1990 not more than \$40,000,000, and in each of 1991, 1992 and 1993 not more than \$50,000,000.”

Subsec. (c)(7). Pub. L. 103-403, §305(2), added par. (7).
Subsec. (e). Pub. L. 103-355, §7101(a), struck out subsec. (e) which read as follows: “In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

“(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

“(2) concerns which are small business concerns, on the basis of a total set-aside;

“(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

“(4) concerns which are small business concerns, on the basis of a partial set-aside.”

Subsec. (f). Pub. L. 103-355, §7101(a), struck out subsec. (f) which read as follows: “After priority is given to the small business concerns specified in subsection (e) of this section, priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

“(1) are not eligible under subsection (e) of this section;

“(2) are not small business concerns; and

“(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.”

Subsec. (g)(1). Pub. L. 103-355, §7106(a)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals” in first sentence and in sentence beginning with “Notwithstanding the”.

Pub. L. 103-355, §7106(a)(2)(A), inserted after third sentence “The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.”

Subsec. (g)(2). Pub. L. 103-355, §7106(a)(2)(B), in first sentence substituted “, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women” for “and by small business concerns owned and controlled by socially and economically disadvantaged individuals.”

Pub. L. 103-355, §7106(a)(1), in second sentence substituted “, small business concerns owned and con-

trolled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”.

Pub. L. 103-355, §7106(a)(2)(C), in fourth sentence inserted at end “and participation by small business concerns owned and controlled by women”.

Subsec. (h)(1), (2)(A), (D), (E). Pub. L. 103-355, §7106(a)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”.

Subsec. (h)(2)(F). Pub. L. 103-355, §7106(a)(3), substituted “small business concerns owned and controlled by women” for “women-owned small business enterprises”.

Subsec. (j). Pub. L. 103-355, §4004, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “Each contract for the procurement of goods and services which has an anticipated value not in excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.”

1992—Subsec. (c)(1)(A). Pub. L. 102-569 substituted “From People Who Are Blind or Severely Disabled” for “from the Blind and Other Severely Handicapped”.

Subsec. (c)(2)(B). Pub. L. 102-366, §232(b)(1), which directed the substitution of “Blind-made” for “Blind-made”, could not be executed to text because “Blind-made” did not appear in subpar. (B).

Subsec. (k)(3), (5). Pub. L. 102-366, §232(b)(2), substituted comma for semicolon at end of pars. (3) and (5).

Subsec. (k)(9). Pub. L. 102-484, §801(h)(8)(A), substituted “section 2323 of title 10” for “section 1207 of Public Law 99-661”.

Subsec. (l)(6). Pub. L. 102-366, §232(b)(3), inserted period at end.

Subsec. (m)(1). Pub. L. 102-484, §801(h)(8)(B), substituted “section 2323 of title 10” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”.

Subsec. (m)(2)(B). Pub. L. 102-366, §232(b)(4), substituted “requirements” for “requirement”.

Subsec. (m)(2)(C). Pub. L. 102-484, §801(h)(8)(C), substituted “section 2323 of title 10” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”.

1991—Subsec. (k)(5). Pub. L. 102-190 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “assist small business concerns to obtain payments, late payment interest penalties, or information due to such concerns, in conformity with chapter 39 of title 31;”

1990—Subsec. (a). Pub. L. 101-574 inserted after second sentence “If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity’s Small Business Procurement Center Representative at least 30 days prior to the solicitation’s issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities

less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities."

Subsec. (j). Pub. L. 101-510 substituted "not in excess of the small purchase threshold" for "of less than \$25,000".

1989—Subsec. (h)(2)(A). Pub. L. 101-37, § 19, inserted "individuals" after "economically disadvantaged".

Subsec. (m)(1)(A). Pub. L. 101-37, § 21, substituted "procedures" for "procedure".

1988—Subsec. (c). Pub. L. 100-590, § 133(a), amended subsec. (c) generally, substituting provisions relating to programs for blind and handicapped individuals for provisions relating to eligibility, participating organizations, monitoring and evaluation, and report to Congressional committees.

Subsec. (g). Pub. L. 100-656, § 502, added par. (1) and designated existing provisions as par. (2) and former pars. (1) and (2) as subpars. (A) and (B).

Subsec. (h). Pub. L. 100-656, § 503, designated existing provisions as par. (1), struck out at end "The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.", and added pars. (2) and (3).

Subsec. (k)(3). Pub. L. 100-656, § 603(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "be responsible only to, and report directly to, the head of such agency or to his deputy, except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition."

Subsec. (k)(5) to (8). Pub. L. 100-496 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsec. (k)(9). Pub. L. 100-656, § 603(2)-(4), added par. (9).

Subsec. (l)(2)(D). Pub. L. 100-590, § 110(1), struck out "unrestricted" before "technical data" in two places.

Subsec. (l)(2)(E). Pub. L. 100-590, § 110(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "have access to the unclassified procurement records and other data of the procurement center;"

Subsec. (l)(3). Pub. L. 100-590, § 110(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt."

Subsec. (l)(6). Pub. L. 100-590, § 110(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least

\$150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator."

Subsec. (l)(7). Pub. L. 100-590, § 110(5), added par. (7).

Subsec. (m). Pub. L. 100-656, § 601, amended subsec. (m) generally, substituting provisions related to implementation of section 1207 of Pub. L. 99-661 for former provisions related to labor surplus area procurement and manpower programs.

1987—Subsec. (a). Pub. L. 100-26, § 10(a)(1), made technical amendment to directory language of section 921(a)(1) of Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661. See 1986 Amendment note below.

Subsec. (g). Pub. L. 100-180, § 809(a)(2), struck out "having a value of \$25,000 or more" after "procurement contracts of such agency".

Pub. L. 100-180, § 809(a)(1), provided for temporarily inserting "having a value of \$25,000 or more" after "procurement contracts of such agency". See Effective Date of 1987 Amendments note below.

Subsec. (o)(1). Pub. L. 100-180, § 809(b)(1), substituted "subsection (a)" for "this subsection" in introductory provisions.

Subsec. (o)(1)(A). Pub. L. 100-26, § 10(b)(1)(A), substituted "at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern" for "the concern will perform at least 50 percent of the cost of the contract with its own employees".

Subsec. (o)(3). Pub. L. 100-26, § 10(b)(1)(B), substituted "requirements of such paragraph" for "requirements of such subparagraph" and inserted at end "The percentage applicable to any such requirement shall be determined in accordance with paragraph (2)."

Subsec. (p). Pub. L. 100-180, § 809(c), struck out subsec. (p) which read as follows:

"(1) Except as provided in paragraphs (2) and (3), the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.

"(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.

"(3) The head of a Federal agency is not required to release any information under paragraph (1) that is not required to be released under section 552 of title 5."

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 921(a), (b)], Pub. L. 99-661, § 921(a), (b), as amended by Pub. L. 100-26, § 10(a)(1), amended subsec. (a) identically, inserting "in each industry category" in cl. (3), and inserting provision identifying an industry category, providing for determination of such category by the Administrator, and permitting segmentation of a market for goods and services under certain circumstances and provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (g). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 921(d)], Pub. L. 99-661, § 921(d), amended subsec. (g) identically, striking out "having values of \$10,000 or more" after "such agency" and inserting provision requiring the head of each Federal agency to make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency.

Subsec. (j). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 922(c)], Pub. L. 99-661, § 922(c), amended subsec. (j) identically, substituting "\$25,000" for "\$10,000".

Subsec. (k)(3). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 903(d)], Pub. L. 99-661, § 903(d), which directed identical amendments to par. (3) by inserting "", except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition" was executed by inserting that phrase immediately before the comma at the end as the probable intent of Congress.

Subsec. (n). Pub. L. 99-272 added subsec. (n).

Subsecs. (o), (p). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 921(c)(2), (e)], Pub. L. 99-661, § 921(c)(2), (e), amended section identically, adding subsecs. (o) and (p).

1984—Subsecs. (l), (m). Pub. L. 98-577 added subsec. (l) and redesignated former subsec. (l) as (m).

1980—Subsec. (c). Pub. L. 96-302, § 116, substituted provisions covering participation of not-for-profit organizations in certain authorized programs during fiscal years 1981, through 1983, the monitoring and evaluation of such participation as causing severe economic injury to for-profit small businesses and transmission of report to congressional committees not later than Jan. 1, 1982, respecting impact of contracts on the for-profit small businesses for provisions respecting eligibility during fiscal year 1978, of public and private organizations and individuals to participate in the award of contracts and requiring transmission of a report by March 1, 1979.

Subsec. (d). Pub. L. 96-302, § 117(a), substituted “small business concerns” for “concerns”.

Subsec. (e). Pub. L. 96-302, § 117(b), in revising text, struck out from introductory clause reference to labor surplus areas; reenacted par. (1) reversing order of reference to small business concerns and location in labor surplus areas; reenacted par. (2); added par. (3); redesignated former par. (3) as (4); and struck out former par. (4) as to concerns located in labor surplus areas on basis of total set-aside, as covered in par. (1).

Subsec. (f). Pub. L. 96-302, § 117(b), substituted provision respecting other priorities in placement of contracts for requirement that subsecs. (d) and (e) of this section cease to be effective subsequent to Sept. 30, 1980, unless renewed prior to such date.

1978—Subsec. (f). Pub. L. 95-507, § 232, substituted “September 30, 1980” for “September 30, 1979”.

Subsecs. (g) to (k). Pub. L. 95-507, § 221, added subsecs. (g) to (k).

Subsec. (l). Pub. L. 95-507, § 233, added subsec. (l).

1977—Pub. L. 95-89 designated existing provisions as subsec. (a) and added subsecs. (b) to (f).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by sections 502 and 503 of Pub. L. 100-656 effective Oct. 1, 1989, and amendment by sections 601 and 603 of Pub. L. 100-656 effective Nov. 15, 1988, see section 803(a)(7), (b)(4)(C), of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Amendment by Pub. L. 100-496 applicable to payments under contracts awarded, contracts renewed, and

contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100-496, set out as a note under section 3902 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100-180, div. A, title VIII, § 809(a)(1), Dec. 4, 1987, 101 Stat. 1130, provided that the amendment made by that section is in effect until Sept. 30, 1988.

Pub. L. 100-180, div. A, title VIII, § 809(a)(2), Dec. 4, 1987, 101 Stat. 1130, as amended by Pub. L. 100-656, title VII, § 731, Nov. 15, 1988, 102 Stat. 3897, provided that the amendment made by that section is effective Oct. 1, 1989.

Amendment by section 10(a)(1), (b)(1) of Pub. L. 100-26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100-26) [title X of section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and title IX of div. A of Pub. L. 99-661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100-26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-272, title XVIII, § 18003(b), Apr. 7, 1986, 100 Stat. 364, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the ninetieth day after the date of the enactment of this Act [Apr. 7, 1986].”

Amendment by section 101(c) [title X, § 921(a), (b)(1), (c)(2)–(e)] of Pub. L. 99-500 and Pub. L. 99-591, and section 921(a), (b)(1), (c)(2)–(e) of Pub. L. 99-661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and section 921(g) of Pub. L. 99-661, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE

Pub. L. 111-240, title I, § 1312(d), Sept. 27, 2010, 124 Stat. 2538, provided that:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator [of the Small Business Administration] shall implement a 3-year pilot electronic procurement center representative program.

“(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program.”

SMALL BUSINESS TEAMS PILOT PROGRAM

Pub. L. 111-240, title I, § 1314, Sept. 27, 2010, 124 Stat. 2540, provided that:

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Pilot Program’ means the Small Business Teaming Pilot Program established under subsection (b); and

“(2) the term ‘eligible organization’ means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

“(A) customer relations and outreach;

“(B) team relations and outreach; and

“(C) performance measurement and quality assurance.

“(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

“(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

“(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

“(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

“(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act [Sept. 27, 2010].

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) \$5,000,000 for each of fiscal years 2010 through 2015.”

[For definitions of “Administrator” and “small business concern” as used in section 1314 of Pub. L. 111-240, set out above, see section 1001 of Pub. L. 111-240, set out as a note under section 632 of this title.]

MANUFACTURING CONTRACTS THROUGH MANUFACTURING APPLICATION AND EDUCATION CENTERS

Pub. L. 103-403, title III, § 303, Oct. 22, 1994, 108 Stat. 4188, provided that:

“(a) IN GENERAL.—The Small Business Administration shall promote the award of Federal manufacturing contracts to small business concerns that participate in manufacturing application and education centers by working with the Department of Commerce and other agencies to identify components and subsystems that are both critical and currently foreign-sourced.

“(b) QUALIFICATIONS.—In order to qualify as a manufacturing application and education center under this section, an entity shall have the capacity to assist small business concerns in a shared-use production environment and to offer the following services:

- “(1) Technology demonstration.
- “(2) Technology education.
- “(3) Technology application support.
- “(4) Technology advancement support.

“(c) INAPPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements of section 15(o)(1)(B) of the Small Business Act [15 U.S.C. 644(o)(1)(B)] shall not apply with respect to any manufacturing contract carried out by a small business concern in conjunction with a manufacturing application and education center under this section.

“(d) REGULATIONS.—Not later than 180 days after the date of enactment of this Act [Oct. 22, 1994], the Administrator of the Small Business Administration shall promulgate final regulations to carry out this section.

“(e) TERMINATION OF AUTHORITY.—The authority of the Small Business Administration under this section shall terminate on September 30, 1997.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Small Business Administration, such sums as may be necessary to carry out this section.”

PILOT PROGRAM FOR VERY SMALL BUSINESS CONCERNS

Pub. L. 103-403, title III, § 304, Oct. 22, 1994, 108 Stat. 4188, as amended by Pub. L. 105-135, title V, § 508, Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106-554, § 1(a)(9) [title V, § 503(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695, provided that:

“(a) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program in accordance with the requirements of this section to provide improved access to Federal contract opportunities for very small business concerns.

“(b) PROCUREMENT CONTRACTS.—

“(1) IN GENERAL.—In carrying out subsection (a), the Administrator shall identify procurement contracts of Federal agencies for award under the program.

“(2) CONTRACT AWARDS.—Under the program established pursuant to this section, the award of a procurement contract of a Federal agency identified by the Administration pursuant to paragraph (1) shall be made by the agency to an eligible program participant selected, and determined to be responsible, by the agency.

“(3) COMPETITION.—All contract opportunities offered for award under the program shall be awarded on the basis of competition among eligible very small business concerns.

“(c) ELIGIBILITY.—Only a very small business concern shall be eligible to compete for a contract to be awarded under the program. A contracting officer may rely in good faith on a written certification that a small business concern is a very small business concern.

“(d) DELEGATION OF AUTHORITY.—The authority of the Administrator under subsections (b)(1) and (c) shall be delegated to not less than 5 and not more than 10 districts of the Administration to promote the award of contracts that can be performed by very small business concerns.

“(e) FINANCIAL ASSISTANCE.—In order to assist very small business concerns receiving contract awards under the program, the Administrator shall establish a preauthorization program for such concerns for the purpose of receiving financial assistance under section 7(a) of the Small Business Act [15 U.S.C. 636(a)].

“(f) ATTAINMENT OF CONTRACT GOALS.—All contract awards made under the program shall be counted toward the attainment of the goals specified in section 15(g) of the Small Business Act [15 U.S.C. 644(g)].

“(g) REGULATIONS.—The Administrator shall—

“(1) issue proposed regulations to carry out this section not later than 180 days after the date of enactment of this Act [Oct. 22, 1994]; and

“(2) issue final regulations to carry out this section not later than 270 days after the date of enactment of this Act.

“(h) REPORT TO CONGRESS.—Not later than April 30, 1997, the Administrator shall transmit to the Congress a report on the results of the program, together with such recommendations as the Administrator deems appropriate.

“(i) PROGRAM TERM.—Implementation of the program shall begin not later than August 30, 1995. The program authorized by this section shall expire on September 30, 2003.

“(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) ADMINISTRATION.—The term ‘Administration’ means the Small Business Administration.

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Small Business Administration.

“(3) PROGRAM.—The term ‘program’ means a program established pursuant to subsection (a).

“(4) VERY SMALL BUSINESS CONCERN.—The term ‘very small business concern’ means a small business concern that—

- “(A) has not more than 15 employees; and
- “(B) has average annual receipts that total not more than \$1,000,000.”

EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS

Pub. L. 103-355, title II, § 2353, Oct. 13, 1994, 108 Stat. 3323, provided that:

“(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

“(A) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received from a small business concern; and

“(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

“(2) The provisions shall not apply to a request for a contracting officer’s decision under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 ([former] 41 U.S.C. 601 et seq.) [see 41 U.S.C. 7101 et seq.].

“(c) DEFINITION.—In this section, the term ‘small business concern’ means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section.”

CONTRACTING PROGRAM FOR CERTAIN SMALL
BUSINESSES

Pub. L. 103-355, title VII, § 7102, Oct. 13, 1994, 108 Stat. 3367, as amended by Pub. L. 106-554, § 1(a)(9) [title V, § 503(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695, provided that:

“(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

“(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

“(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

“(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

“(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

“(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

“(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

“(A) conditions for the use of advance payments;

“(B) provisions for contract payment terms that provide for—

“(i) accelerated payment for work performed during the period for contract performance; and

“(ii) full payment for work performed;

“(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

“(D)(i) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

“(ii) guidance for limiting the use of such restricted competitions in the case of any contracting

activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

“(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2003.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL

Pub. L. 103-355, title VII, § 7104, Oct. 13, 1994, 108 Stat. 3369, provided that:

“(a) ESTABLISHMENT.—There is hereby established an interagency council to be known as the ‘Small Business Procurement Advisory Council’ (hereinafter in this section referred to as the ‘Council’).

“(b) DUTIES.—The duties of the Council are—

“(1) to develop positions on proposed procurement regulations affecting the small business community; and

“(2) to submit comments reflecting such positions to appropriate regulatory authorities.

“(c) MEMBERSHIP.—The Council shall be composed of the following members:

“(1) The Administrator of the Small Business Administration (or the designee of the Administrator).

“(2) The Director of the Minority Business Development Agency.

“(3) The head of each Office of Small and Disadvantaged Business Utilization (established under section 15(k) of the Small Business Act (15 U.S.C. 644(k)[I]) in each Federal agency having procurement powers.

“(d) CHAIRMAN.—The Council shall be chaired by the Administrator of the Small Business Administration.

“(e) MEETINGS.—The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

“(f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).”

PROCUREMENT PROCEDURES UNDER SMALL BUSINESS
COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF
1988

Pub. L. 102-366, title II, § 202(h), Sept. 4, 1992, 106 Stat. 996, provided that: “Restricted competitions pursuant to section 713(b) of the Small Business Competitiveness Demonstration Program Act of 1988 [Pub. L. 100-656] ([former] 15 U.S.C. 644 note, 102 Stat. 3892) shall not be imposed with respect to the designated industry group of architectural and engineering services if the rate of small business participation exceeds 35 percent, until the improvements to the collection of data regarding prime contract awards (as required by subsection (g) [amending section 717 of Pub. L. 100-656, formerly set out below]) and the system for collecting data regarding other than prime contract awards (as required by subsection (d) [amending section 714 of Pub. L. 100-656, formerly set out below]) have been implemented, as determined by the Administrator for Federal Procurement Policy.”

MODIFICATIONS OF TEST PLAN AND POLICY DIRECTION
UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Pub. L. 102-366, title II, § 202(i), Sept. 4, 1992, 106 Stat. 996, provided that: “The Administrator for Federal Procurement Policy shall issue appropriate modifications

to the test plan and policy direction issued pursuant to section 715 of the Small Business Competitiveness Demonstration Program Act of 1988 [Pub. L. 100-656, formerly set out below], to conform to the amendments made by this section and section 201(a) [amending sections 711 to 714, 716, and 717 of Pub. L. 100-656, formerly set out below].”

CONTRACT BUNDLING STUDY

Pub. L. 102-366, title III, §321, Sept. 4, 1992, 106 Stat. 1006, provided that the Administrator of the Small Business Administration was to conduct a study regarding the impact of the practice known as “contract bundling” on the participation of small business concerns in the Federal procurement process and, not later than May 15, 1993, to submit a report on the results of the study to the Committees on Small Business of the Senate and the House of Representatives.

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Pub. L. 100-656, title VII, §§701-722, Nov. 15, 1988, 102 Stat. 3889-3895, as amended by Pub. L. 101-37, §§23-29, June 15, 1989, 103 Stat. 75, 76; Pub. L. 101-574, title II, §243, Nov. 15, 1990, 104 Stat. 2827; Pub. L. 102-54, §13(e), June 13, 1991, 105 Stat. 275; Pub. L. 102-366, title II, §§201-202(g), 203, Sept. 4, 1992, 106 Stat. 993-996; Pub. L. 102-484, div. A, title VIII, §801(h)(9), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102-564, title III, §307(a), Oct. 28, 1992, 106 Stat. 4263; Pub. L. 103-160, div. A, title VIII, §850(2), Nov. 30, 1993, 107 Stat. 1726; Pub. L. 103-446, title XII, §1202(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104-208, div. D, title I, §108(a)-(c)(1), Sept. 30, 1996, 110 Stat. 3009-732, 3009-733; Pub. L. 105-18, title II, §2002, June 12, 1997, 111 Stat. 174; Pub. L. 105-135, title IV, §§401-405, Dec. 2, 1997, 111 Stat. 2616; Pub. L. 108-375, div. A, title VIII, §821, Oct. 28, 2004, 118 Stat. 2016, known as the Small Business Competitiveness Demonstration Program Act of 1988, established a Small Business Competitiveness Demonstration Program, prior to repeal by Pub. L. 111-240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

[Pub. L. 111-240, title I, §1335(b), Sept. 27, 2010, 124 Stat. 2543, provided that: “The amendment made by this section [repealing sections 701-722 of Pub. L. 100-656, formerly set out above, and section 741 of Pub. L. 100-656, formerly set out below]—

[(1) shall take effect on the date of enactment of this Act [Sept. 27, 2010]; and

[(2) apply to the first full fiscal year after the date of enactment of this Act.”]

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR

Pub. L. 100-656, title VII, §741, Nov. 15, 1988, 102 Stat. 3897, authorized the Small Business Administration to segment the industry category of shipbuilding and ship repair, prior to repeal by Pub. L. 111-240, title I, §1335(a), Sept. 27, 2010, 124 Stat. 2543.

PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS; REPORT ON IMPACT ON SMALL BUSINESS CONCERNS

Pub. L. 100-590, title I, §133(b), Nov. 3, 1988, 102 Stat. 3006, provided that not later than Sept. 30, 1992, the General Accounting Office was to prepare a report describing the impact that contracts awarded under subsec. (c) of this section had on for-profit small business concerns for fiscal years 1989 through 1991, and transmit the report to the Committees on Small Business of the Senate and the House of Representatives.

TASK FORCE ON PURCHASES FROM BLIND AND SEVERELY HANDICAPPED INDIVIDUALS; ESTABLISHMENT; MEETINGS; RECOMMENDATIONS

Pub. L. 100-590, title I, §133(c), Nov. 3, 1988, 102 Stat. 3006, provided that: “There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business

community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affairs [sic] of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled ‘An Act to create a Committee on Purchases of Blind-made Products, and for other purposes’, approved June 25, 1938 ([former] 41 U.S.C. 46) [now 41 U.S.C. 8502]. The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act [15 U.S.C. 644(c)] and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate.”

STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Pub. L. 98-577, title IV, §403(b), Oct. 30, 1984, 98 Stat. 3082, provided that:

“(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

“(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

“(B) an evaluation of the extent to which competition has been increased as a result of such efforts; and

“(C) such other information as the Administrator may deem appropriate.

“(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration’s adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress.”

EX. ORD. NO. 13157. INCREASING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

Ex. Ord. No. 13157, May 23, 2000, 65 F.R. 34035, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq.*, section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) [amending 15 U.S.C. 632, 637, 644, 645], and the Office of Federal Procurement Policy [Act], [former] 41 U.S.C. 403, *et seq.*, and in order to strengthen the executive branch’s commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

SECTION 1. *Executive Branch Policy.* In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

SEC. 2. *Responsibilities of Federal Departments and Agencies.* Each department and agency (hereafter referred to collectively as “agency”) that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and ef-

ficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

SEC. 3. *Responsibilities of the Small Business Administration.* The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President, through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) [15 U.S.C. 637(a)] program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

SEC. 4. *Other Responsibilities of Federal Agencies.* To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited

to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protégé programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

SEC. 5. *Subcontracting Plans.* The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101-189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

SEC. 6. *Action Plans.* If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

SEC. 7. *Compliance.* Independent agencies are requested to comply with the provisions of this order.

SEC. 8. *Consultation and Advice.* In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

SEC. 9. *Judicial Review.* This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13170. INCREASING OPPORTUNITIES AND ACCESS FOR DISADVANTAGED BUSINESSES

Ex. Ord. No. 13170, Oct. 6, 2000, 65 F.R. 60827, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq.*), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 15 U.S.C. 644 note), the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403 *et seq.*), Executive Order 11625 [15 U.S.C. 631 note], and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the executive branch to ensure nondiscrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

SEC. 2. *Responsibilities of Executive Departments and Agencies with Procurement Authority.* The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Tables for classification] are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d) and other related laws. In particular, they shall ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for

awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)]. These goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

SEC. 3. *Responsibilities of the Small Business Administration.* The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;

(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

SEC. 4. *Federal Advertising.* Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

SEC. 5. *Information Technology.* Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

SEC. 6. *General Services Administration Schedules.* The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Mul-

tiple Award Schedule to count those orders toward their 8(a) procurement goals.

SEC. 7. Bundling Contracts. To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

SEC. 8. Awards Program. The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

SEC. 9. Applicability. Independent agencies are requested to comply with the provisions of this order.

SEC. 10. Administration, Enforcement, and Judicial Review.

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

DELEGATION OF AUTHORITY TO ESTABLISH ANNUAL GOALS FOR PARTICIPATION OF SMALL BUSINESS CONCERNS IN PROCUREMENT CONTRACTS

Memorandum of the President of the United States, June 6, 1990, 55 F.R. 27453-27455, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended [subsec. (g) of this section], and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100-656) [amending this section].

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

CONTINUED COMMITMENT TO SMALL, SMALL DISADVANTAGED, AND SMALL WOMEN-OWNED BUSINESSES IN FEDERAL PROCUREMENT

Memorandum of President of the United States, Oct. 13, 1994, 59 F.R. 52397, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

It is the policy of the Federal Government that a fair proportion of its contracts be placed with small, small disadvantaged, and small women-owned businesses. Such businesses should also have the maximum practicable opportunity to participate as subcontractors in contracts awarded by the Federal Government consistent with efficient contract performance. I am committed to the continuation of this policy. Therefore, I ask that you encourage the use of various tools, including set-asides, price preferences, and section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as necessary to achieve this policy objective.

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Act note set out under section 101 of Title 41, Public Contracts] author-

izes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

§ 645. Offenses and penalties

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.