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 635(8), (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, (3) 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 contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary of 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 Administrator 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 Administrator shall limit such an industry category to a greater extent than provided under such classification codes if the Administrator 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 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 Administrator 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 contract 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 percent 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:

1. Cost savings.
2. Quality improvements.
3. Reduction in acquisition cycle times.
4. Better terms and conditions.
5. 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.


(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-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.

The Government-wide goal for participation by small business concerns shall be established at not less than 1 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 service-disabled veterans 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 socially and economically disadvantaged individuals shall be established at not less than 2 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2001, and not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year thereafter. 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 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 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. 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. 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 socially and economically disadvantaged individuals, and 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), ensure 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, 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
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 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 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 owned and controlled by women through—

(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 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 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 712 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, 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-
propriate, 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 processed in the same manner and subject to the same conditions and limitations as an appeal pursuant to this subsection and shall instruct 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 of 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.

*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) 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.

(B) Agency procurement data sources

Not later than 1 year after December 21, 2000, and annually in March thereafter, the Administrator 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.

(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 section) 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 Administrator 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
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 concerns identified in subsection (g)(2); and

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

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

(2) notwithstanding the fair opportunity requirements under section 2304 of title 10 and section 4106 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).

(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); and

(2) notwithstanding the fair opportunity requirements under section 2304 of title 10 and section 4106 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).

References in Text

Prior similar provisions were contained in section 214 of Act July 30, 1953, ch. 282, 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


2009—Subsec. (j)(2). Pub. L. 111-117, §1336(b)(1), inserted “certified” before “HUBZone small business concerns” in each of subpars. (A) to (C). [Codification note: In 2010 this section was redesignated as section 644 by Pub. L. 111-240, §1347(a)(1).]

CODIFICATION


PRIORITY PROVISIONS

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, § 305(1), amended subsec. (c). See 1996 Amendment note below.

Subsec. (h). Pub. L. 105-135, § 608(b)(3), inserted "qualified HUBZone small business concerns," after "small business concerns," wherever appearing; substituted comma for semicolon at end of pars. (3) and (5). Pub. L. 105-135, § 410(c)(1), (2), added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

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


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 and which are located in a labor surplus area, on the basis of a partial set-aside;
5. concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;
6. concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside; 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 such contracts and subcontracts with 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".

Subsec. (g)(2). 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 contracts and subcontract awards for each fiscal year.".

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


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."


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


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 could not be executed to text because "Blind-made" did not appear in subpar. (B).


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 could not be executed to text because "Blind-made" did not appear in subpar. (B)."
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 Govern-
ment, (3) why the proposed acquisition cannot be of-
erred 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 re-
quired prior to issuance of the solicitation. Within 15
days after receipt of the proposed procurement and ac-
companying statement, if the Procurement Center rep-
resentative 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 con-
tracting opportunities:"
Subsec. (j). Pub. L. 101–510 substituted “not in excess of
the small purchase threshold” for “of less than
$25,000”.

“individuals” after “economically disadvantaged”.
“procedures” for “procedure”.

1988—Subsec. (c). Pub. L. 100–590, §133(a), amended
subpar. (1) generally, substituting provisions relating
to programs for blind and handicapped individuals for
provisions relating to eligibility, participating organi-
zations, monitoring and evaluation, and report to Con-
gressional 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, §505, designated existing
provisions as par. (1), struck out at end “The Adminis-
tration 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).

(3) generally. Prior to amendment, par. (3) read as fol-
lows: “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 Uti-
лизации 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
repealed former pars. (5) to (7) as (6) to (8), respect-
tively.

(9).

“unrestricted” before “technical data” in two places.

Subsec. (l)(2)(E). Pub. L. 100–590, §110(2), added sub-
para. (E) generally. Prior to amendment, subpar. (E)
read as follows: “have access to the unclassified pro-
curement records and other data of the procurement
center;”.

(3) generally. Prior to amendment, par. (3) read as follows:
“A breakout procurement center representative is au-
thorized to appeal a failure to act favorably on any rec-
ommendation made pursuant to paragraph (2). Such ap-
peal shall be in writing, specifically reciting both the
circumstances of the appeal and the basis of the recom-
mendation. 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 ini-
tially failed to act favorably on the recommendation.
Such appeal shall be decided within 30 calendar days of
its receipt.”

(6) generally. Prior to amendment, par. (6) read as follows:
“For purposes of this subsection, the term ‘major pro-
curement center’ means 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 Admin-
istrator.’’

(m) generally, substituting provisions related to imple-
mentation 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 tech-
nical amendment to directory language of section

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”.

Subsec. (j). Pub. L. 100–180, §809(a)(1), struck for tempo-
arily inserting “having a value of $25,000 or more” after “procurement contracts of such agency”.

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), substi-
tuted “at least 50 percent of the cost of contract per-
formance incurred for personnel shall be expended for
employees of the concern” for “the concern will per-
form 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 percent-
age applicable to any such requirement shall be deter-
m ined 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 na-
tional 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.”

§101(c) [§921(a)], (b), Pub. L. 99–661, §921(a), (b), as
amended by Pub. L. 100–26, §10(a)(1), amended par.
(a) identically, inserting “in each industry category” in
cl. (3), and inserting provision identifying an indus-
try category, providing for determination of such cat-
egory by the Administrator, and permitting segmenta-
tion 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 the fair market price.

[§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 re-
quiring the head of each Federal agency to make con-
sistent efforts to annually expand participation by
small business concerns from each industry category in
procurement contracts of the agency.

[§922(c)], Pub. L. 99–661, §922(c), amended subsec. (j)
identically, substituting “$25,000” for “$10,000”.

§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 Di-
rector of the Office of Small and Disadvantaged Busi-
ness Utilization shall be responsible to, and report di-
rectly to, the Under Secretary of Defense for Acquisi-
tion” was executed by inserting that phrase imme-
diately before the comma at the end as the probable in-
tent of Congress.
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Subsecs. (o), (p). Pub. L. 99–500 and Pub. L. 99–591, \$110(c) \([\$921(c)(2)], (e)], Pub. L. 99–661, \$921(c)(2), (e)], amended section identically, adding subsecs. (o) and (p).

1984—Subsec. (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).


Subsecs. (g) to (k). Pub. L. 95–507, \$232, substituted “September 30, 1980” for “September 30, 1979”.


1977—Subsec. (f). 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


EFFECTIVE DATE OF 1996 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103–355, set out in section 1001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103–355, see section 1001 of Pub. L. 103–355, set out in section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS


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


EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–272, title XVIII, \$18003(b), Apr. 7, 1986, 100Stat. 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].”


EFFECTIVE DATE OF 1980 AMENDMENT


ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE

Pub. L. 111–240, title I, \$1312(d), Sept. 27, 2010, 124 Stat. 2338, 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. 2340, 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 2013.

[For definitions of ‘‘Administrator’’ and ‘‘small business concern’’ as used in section 1314 of Pub. L. 111–240, see section 1001 of Pub. L. 111–240, set out above, see section 1801 of Pub. L. 111–240, set out as a note under section 632 of this title.]

MANUFACTURING CONTRACTS THROUGH MANUFACTURING APPLICATION AND EDUCATION CENTERS


“(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


“(A) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program in accordance with the requirements of this section to provide 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.

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

“(d) 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.

“(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


“(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) PROCUREMENT CONTRACTS.—
“(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.


“(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**


10 percent when evaluating an offer received from restricted solicitation.

(1) I

(a).

(b)(2).

“(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.


“(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 procurements 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.”


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. 3082, 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. 111–240, title I, §1335(b), Sept. 27, 2010, 124 Stat. 2543, 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 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 Administrator's adherence to the standards jointly established and the accuracy of the information the Administrator 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 706 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–353) (amending 15 U.S.C. 632, 637, 644, 665), and the Office of Federal Procurement Policy [Act, (former) 41 U.S.C. 443, 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.

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

SIC. 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 (OFFP), 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)3) 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 with 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.

SIC. 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, SDBs, HUBZone small businesses, SDIs, 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, where appropriate, because of use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

SIC. 5. Subcontracting Plans. The head of each Federal agency, or designated representative, shall work closely with the SBA, OFFP, 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.

SIC. 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.

SIC. 7. Compliance. Independent agencies are requested to comply with this order.

SIC. 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, the SBA and local governments, WOSBs, other private-sector partners, and other experts.

SIC. 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


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)), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11265, 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), and MBEs.

SIC. 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 section.

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

(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 (a) firms 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 (a) firms and SDBs and to facilitate long-term business relationships;

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

(viii) train program and procurement officials regarding the policy of including (a) firms 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 (a) firms, 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 (a) firms 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 made to (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 (a) firms, SDBs, and MBEs as both prime contractors and subcontractors and report on these efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

SISC. 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 subcontracting goals and the actual prime and subcontract awards to (a) firms 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 (a) firms 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 (a) firms, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

SISC. 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 (a) firms, SDBs, 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 electronic media 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 (a) firms, SDBs, and MBEs.

SISC. 5. Information Technology. Each department and agency shall aggressively seek to ensure substantial (a) firm, 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.

SISC. 6. General Services Administration Schedules. The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of (a) firms and SDBs on GSA Schedules, and provide greater opportunities for (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 use the Schedule opportunities for (a) firms and SDBs. The GSA shall allow agencies ordering from designated (a) firms under the Mul-

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§ 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.