§ 641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85–536, §2[12], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS
Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 229, as amended by act Aug. 9, 1955, ch. 628, §12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b) of this title. See Codification note set out under section 631 of this title.

EXECUTIVE ORDER NO. 10504

EXECUTIVE ORDER NO. 11871
Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, which transferred the functions of ACTION Agency relating to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex. Ord. No. 12553, Feb. 25, 1966, 51 F.R. 7237.

§ 642. Requirements for loans

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance by any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for 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. 229, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

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

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

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

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

§ 644. Awards or contracts

(a) Small business procurements

(1) In general

For purposes of this chapter, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

(A) maintaining or mobilizing the full productive capacity of the United States;
(B) war or national defense programs; or
(C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) Industry category defined

(A) In general

In this subsection, the term “industry category” means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System
codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

(i) due to special capital equipment needs;
(ii) due to special labor requirements;
(iii) due to special geographic requirements, except as provided in subparagraph (B);
(iv) due to unique Federal buying patterns or requirements; or
(v) to recognize a new industry.

(B) Exception for geographic requirements

The Administrator may not further segment an industry category based on geographic requirements unless—

(i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;
(ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and
(iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

(3) Determinations with respect to awards or contracts

Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) Increasing prime contracting opportunities for small business concerns

(A) Description of covered proposed procurements

The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

(i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;
(ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or
(iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) Notice to procurement center representatives

With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (l)) along with a statement explaining—

(i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;
(ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;
(iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;
(iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or
(v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) Alternatives to increase prime contracting opportunities for small business concerns

If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods for increasing prime contracting opportunities for small business concerns.

(D) Failure to agree on an alternative procurement method

If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) Contracts for sale of government property

With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) Sale of electrical power or other property

Nothing in this subsection 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 Federal Government.

(7) Costs exceeding fair market price

A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.
(b) Placement of contracts by contracting procurement agency
With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:
(A) The term ‘‘Committee’’ means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41.
(B) The term ‘‘public or private organization for the handicapped’’ has the same meaning given such term in section 632(e) of this title.
(C) The term ‘‘handicapped individual’’ has the same meaning given such term in section 632(f) of this title.

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $40,000,000.
(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41.

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

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.
(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the 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 this paragraph in a manner that preserves confidentiality and is suitable for measurement and analysis. The Office of Federal Procurement Policy shall report to the Administrator which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per cent 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 is performed in a sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this section 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 portion 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 a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—
(A) provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and
(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

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

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

(C) Reduction of costs not determinative

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

(3) Strategy specifications

If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include the following information:

(A) The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.

(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

(C) An assessment of—
   (i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and
   (ii) the specific actions designed to maximize participation of small business concerns as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4) Contract teaming

(A) In general

In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors or a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) Evaluation of offers

The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

(i) Teams

When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) Joint ventures

When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(C) Status as a small business concern

Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern for any other purpose.

(5) Past performance ratings of joint ventures for small business concerns

With respect to evaluating an offer for a prime contract made by a small business concern that previously participated in a joint venture with another business concern (whether or not such other business concern was a small business concern), the Administrator shall establish regulations—

(A) allowing the small business concern to elect to use the past performance of the joint venture if the small business concern has no relevant past performance of its own;

(B) requiring the small business concern, when making an election under subparagraph (A)—
   (i) to identify to the contracting officer the joint venture of which the small business concern was a member; and
   (ii) to inform the contracting officer what duties and responsibilities the small business concern carried out as part of the joint venture; and

(C) requiring a contracting officer, if the small business concern makes an election under subparagraph (A), to consider the past performance of the joint venture when evaluating the past performance of the small business concern, giving due consideration to the information provided under subparagraph (B)(ii).

(f) Contracting preference for small business concerns in a major disaster area

(1) Definition

In this subsection, the term "disaster area" means the area for which the President has de-
clared a major disaster, during the period of the declaration.

(2) Contracting preference

An agency shall provide a contracting preference for a small business concern located in a disaster area if the small business concern will perform the work required under the contract in the disaster area.

(3) Credit for meeting contracting goals

If an agency awards a contract to a small business concern under the circumstances described in paragraph (2), the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A).

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

(1) Governmentwide goals.

(A) Establishment.—The President shall annually establish Governmentwide 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 in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. In meeting this goal, the Government shall ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry.

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation 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. Contracts excluded from review by procurement center representatives pursuant to subsection (b)(9)(B) shall not be considered when establishing these goals.

(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. Contracts excluded from review by procurement center representatives pursuant to subsection (b)(9)(B) shall not be considered when establishing these goals.

(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) After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by 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.
(E) The head of each Federal agency, in attempting to attain expanded participation under 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 goals established under subparagraph (A).

(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.

(3) First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(h) Reporting on goals for procurement contracts awarded to small business concerns

(1) Agency reports

At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by 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, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year;

(C) any justifications for a failure to achieve such goals; and

(D) a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) Reports by Administrator

Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

1So in original. Probably should be “business”.

(A) a copy of each report submitted to the Administrator under paragraph (1);

(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator’s comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year to—

(i) small business concerns—

(II) the extent of the participation by

(I) in the aggregate;

(ii) 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, or a subset of any such concerns;

(ii) small business concerns owned and controlled by service-disabled veterans—

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through unrestricted competition;

(V) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VI) that were awarded using a procurement method that restricted competition to 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, small business concerns owned and controlled by women, or a subset of any such concerns;

(iii) all other small business concerns—

(II) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VII) that were awarded using a procurement method that restricted competition to 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, small business concerns owned and controlled by women, or a subset of any such concerns;
(III) qualified HUBZone small business concerns—
   (I) in the aggregate;
   (II) through sole source contracts;
   (III) through competitions restricted to small business concerns;
   (IV) through competitions restricted to qualified HUBZone small business concerns;
   (V) through unrestricted competition where a price evaluation preference was used;
   (VI) through unrestricted competition where a price evaluation preference was not used;
   (VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be qualified HUBZone small business concerns for purposes of the initial contract; and
   (VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—
   (I) in the aggregate;
   (II) through sole source contracts;
   (III) through competitions restricted to small business concerns;
   (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
   (V) through unrestricted competition;
   (VI) by reason of that concern’s certification as a small business owned and controlled by socially and economically disadvantaged individuals;
   (VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by socially and economically disadvantaged individuals;
   (VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by socially and economically disadvantaged individuals for purposes of the initial contract; and
   (V) small business concerns owned by an Indian tribe (as such term is defined in section 637(a)(13) of this title) other than an Alaska Native Corporation—
   (I) in the aggregate;
   (II) through sole source contracts;
   (III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Indian tribe other than an Alaska Native Corporation for purposes of the initial contract;

(vi) small business concerns owned by a Native Hawaiian Organization—
   (I) in the aggregate;
   (II) through sole source contracts;
   (III) through competitions restricted to small business concerns;
   (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
   (V) through unrestricted competition;
   and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by a Native Hawaiian Organization for purposes of the initial contract;

(vii) small business concerns owned by an Alaska Native Corporation—
   (I) in the aggregate;
   (II) through sole source contracts;
   (III) through competitions restricted to small business concerns;
   (IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;
   (V) through unrestricted competition;
   and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Alaska Native Corporation for purposes of the initial contract; and

(viii) small business concerns owned and controlled by women—
   (I) in the aggregate;
   (II) through competitions restricted to small business concerns;
   (III) through competitions restricted using the authority under section 637(m)(2) of this title;
   (IV) through competitions restricted using the authority under section 637(m)(2) of this title and in which the waiver authority under section 637(m)(3) of this title was used;
   (V) through sole source contracts awarded using the authority under sub-section 2 637(m)(7) of this title;

²So in original. Probably should be “section”.
§ 644  TITLE 15—COMMERCE AND TRADE

(3) Procurement data

(A) Federal Procurement Data System

(i) In general

To assist in the implementation of this section, the Administrator shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(ii) GSA report

On the date that the Administrator makes available the report required under paragraph (2), the Administrator of the General Services Administration shall submit to the President and Congress, and shall make available on a public website, a report in the same form and manner, and including the same information, as the report required under paragraph (2). The report shall include all procurements made for the period covered by the report and may not exclude any contract awarded.

(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 Administrator, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(4) Best in class small business participation reporting

(A) Addendum

In addition to the requirements under paragraph (2) and for each best in class designation, the Administrator shall include in the report required by such paragraph—

(i) the total amount of spending Governmentwide in such designation; and

(ii) the number of small business concerns awarded contracts and the dollar amount of such contracts awarded within each such designation to each of the following—

(I) qualified HUBZone small business concerns;

(II) small business concerns owned and controlled by women;

(III) small business concerns owned and controlled by service-disabled veterans; and

(IV) small business concerns owned and controlled by socially and economically disadvantaged individuals.

(B) Best in class defined

The term “best in class” has the meaning given such term by the Director of the Office of Management and Budget.

(C) Effective date

The Administrator shall report on the information described by subparagraph (A) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any successor to such systems.

(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 the micro-purchase threshold, but not greater than the simplified acquisition threshold shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

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

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the author-

(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, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 637, 644, 657a, 657f, or 657q of this title. Such officer or employee—

(1) shall be known as the “Director of Small and Disadvantaged Business Utilization” for such agency;

(2) shall be appointed by the head of such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5), except that, for any agency in which the positions of Chief Acquisition Officer and senior procurement executive (as such terms are defined under section 657q(a) of this title) are not Senior Executive Service positions, the Director of Small and Disadvantaged Business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS–15 of the General Schedule under section 5302 of title 5 (including comparability payments under section 5304 of title 5);

(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively 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 (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary’s designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 637, 644, 657a, 657f, and 657q of this title which relate to such agency;

(5) shall 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) shall 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,\(^4\)

(7) shall 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 sections 637, 644, 657a, 657f, and 657q of this title;

(8) shall 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 sections 637, 644, 657a, 657f, and 657q of this title,\(^4\)

(9) shall 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;

(10) shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) or section 637, 644, 657a, or 657f of this title, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(11) shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 657q of this title;

(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

(15) shall carry out exclusively the duties enumerated in this chapter, and shall, while the Director, not hold any other title, posi-

\(^4\)See References in Text note below.

\(^4\)So in original. The comma probably should be a semicolon.
§ 644

carry out responsibilities under this subsection; (16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (15) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year;

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year; and

(D) any failure of the agency to comply with section 637, 644, 657a, or 657f of this title;

(17) shall, when notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(A) submit the notice of the small business concern to the contracting officer and, if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition;

(B) inform the advocate for competition of such agency (as established under section 1705 of title 41 or section 2318 of title 10) of such notice; and

(C) ensure that the small business concern is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if such resources and processes are provided by such agency, the Administration, the Comptroller General, or a procurement technical assistance program established under chapter 142 of title 10;

(18) shall review summary data provided by purchase card issuers of purchases made by the agency greater than the micro-purchase threshold (as defined under section 1902 of title 41) and less than the simplified acquisition threshold (as defined under section 1902 of title 41) and less than the simplified acquisition threshold to ensure that the purchases have been made in compliance with the provisions of this chapter and have been properly recorded in the Federal Procurement Data System, if the method of payment is a purchase card issued by the Department of Defense pursuant to section 2784 of title 10 or by the head of an executive agency pursuant to section 1909 of title 41;

(19) shall provide assistance to a small business concern awarded a contract or subcontract under this chapter or under title 10 or title 41 in finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract;

(20) shall review all subcontracting plans required by paragraph (4) or (5) of section 637(d) of this title to ensure that the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract to which the plan applies;

(21) shall consult with the appropriate personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program under section 638 of this title with researching applicable solicitations for the award of a Federal contract (particularly with the Federal agency that has a funding agreement, as defined under section 638 of this title, with the concern) to market the research developed by such concern under such SBIR or STTR program.

This subsection shall not apply to the Administration.

(f) Procurement center representatives

(1) ASSIGNMENT AND ROLE.—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

(2) ACTIVITIES.—A 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, barriers to small business participation in Federal contracting previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) review any bundled or consolidated solicitation or contract in accordance with this chapter;

(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, with such data provided upon request in electronic format, when available;

(F) receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph 6 (7) and (8) of subsection 6

6 So in original. Probably should be followed by “and”.

7 So in original. Probably should be “paragraphs”.

VerDate Oct 09 2002 10:22 Oct 12, 2021 Jkt 000000 PO 00000 Frm 00930 Fmt 5800 Sfmt 5800 D:\OLRC\DATA\PRINT\2018SUPP220\OUTPUT\PCC\FOLIOS\USC15.20 PROD
(k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified;

(I) assist small business concerns with finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract;

(J) consult with the appropriate personnel from the relevant Federal agency, to assist small business concerns participating in a SBIR or STTR program under section 9 with Phase III;

(K) carry out any other responsibility assigned by the Administrator.

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

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

(5) Position Requirements.—

(A) In general.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii) have the certification described in subparagraph (C).

(B) Compensation.—The Administrator shall establish personnel positions for procurement center representatives assigned under this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(C) Certification Requirements.—

(i) In general.—Consistent with the requirements of clause (ii), a procurement center representative shall have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(ii) Delay of Certification Requirements.—

(I) Timing.—The certification described in clause (i) is not required for any person serving as a procurement center representative until the date that is one calendar year after the date such person is appointed as a procurement center representative.

(II) Application.—The requirements of subclause (I) shall—

(aa) be included in any initial job posting for the position of a procurement center representative; and

(bb) apply to any person appointed as a procurement center representative after January 3, 2013.

(6) Major Procurement Center Defined.—For purposes of this subsection, the term “major procurement center” means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.

(7) Training.—

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

(B) Limitation.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8) Annual Briefing and Report.—A 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 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(9) Scope of Review.—The Administrator—

(A) may not limit the scope of review by the procurement center representative for any solicitation of a contract or task order without regard to whether the contract or task order or part of the contract or task order is set aside for small business concerns, whether 1 or more contracts or task order awards are reserved for small business concerns under a multiple award contract, or whether or not the solicitation would result in a bundled or consolidated contract (as defined in subsection (a)) or a bundled or consolidated task order; and

(B) shall, unless the contracting agency requests a review, limit the scope of review by

So in original. Probably should be “the procurement center representative”.

§ 644

(m) Additional duties of procurement center representatives

All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section and section 657a of this title.

(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) Limitations on subcontracting

A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 657a of this title.

(p) Access to data

(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.

(3) Analysis

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

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and

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

(4) Annual report on contract bundling

(A) In general

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

(B) Contents

Each report transmitted under subparagraph (A) shall include—

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

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

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

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

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

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

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

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

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

(5) Access to data

(A) Federal procurement data system

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

(B) Agency procurement data sources

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

---

*So in original. No subpar. (B) has been enacted.
shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q) Reports related to procurement center representatives

(1) Teaming and joint venture requirements

(A) In general

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.

(B) Teams

When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(C) Joint ventures

When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(2) Policies on reduction of contract bundling

(A) In general

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

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

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

(B) Rationale for contract bundling

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

(3) Reporting

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

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

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

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

(r) Multiple award contracts

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

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

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

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

(s) Data quality improvement plan

(1) In general

Not later than October 1, 2015, the Administrator for the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundled or consolidated contracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41).

(2) Plan requirements

The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Administrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4); and

(B) recommend changes to policies and procedures, including training procedures of
relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;
(C) recommend requirements for periodic and statistically valid data verification and validation; and
(D) recommend clear data verification responsibilities.

(3) Plan submission
The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4) Implementation
Not later than October 1, 2016, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

(5) Certification
The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

(6) Definitions
In this subsection, the following definitions apply:
(A) Chief Acquisition Officer; senior procurement executive
The terms “Chief Acquisition Officer” and “senior procurement executive” have the meanings given such terms in section 657q(a) of this title.
(B) Bundled or consolidated contract
The term “bundled or consolidated contract” means a bundled contract (as defined in section 632(a) of this title) or a contract resulting from the consolidation of contracting requirements (as defined in section 657q(a)(2) of this title).

(1) GAO report on Small Business Administration programs in Puerto Rico
Not later than one year after June 30, 2016, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the application and utilization of contracting activities of the Administration (including contracting activities relating to HUBZone small business concerns) in Puerto Rico. The report shall also identify any obstacle to the efficient implementation of such contracting activities.

(u) Post-award compliance resources
The Administrator shall provide to small business development centers and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10 and shall make available on the website of the Administration, a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract.

(v) Regulatory changes and training materials
Not less than annually, the Administrator shall provide to the Defense Acquisition University (established under section 1746 of title 10), the Federal Acquisition Institute (established under section 1201 of title 41), the individual responsible for mandatory training and education of the acquisition workforce of each agency (described under section 1709(a)(1)(C) of title 41), small business development centers, and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10—

(1) a list of all changes made in the prior year to regulations promulgated—
(A) by the Administrator that affect Federal acquisition; and
(B) by the Federal Acquisition Council that implement amendments to this chapter; and
(2) any materials the Administrator has developed that explain, train, or assist Federal agencies or departments or small business concerns with compliance with the regulations described in paragraph (1).

(w) Solicitation notice regarding administration of change orders for construction
(1) In general
With respect to any solicitation for the award of a contract for construction anticipated to be awarded to a small business concern, the agency administering such contract shall provide a notice along with the solicitation to prospective bidders and offerors that includes—
(A) information about the agency’s policies or practices in complying with the requirements of the Federal Acquisition Regulation relating to the timely definitization of requests for an equitable adjustment; and
(B) information about the agency’s past performance in definitizing requests for equitable adjustments in accordance with paragraph (2).

(2) Requirements for agencies
An agency shall provide the past performance information described under paragraph (1)(B) as follows:
(A) For the 3-year period preceding the issuance of the notice, to the extent such information is available.
(B) With respect to an agency that, on August 13, 2018, has not compiled the information described under paragraph (1)(B)—
(i) beginning 1 year after August 13, 2018, for the 1-year period preceding the issuance of the notice;
(ii) beginning 2 years after August 13, 2018, for the 2-year period preceding the issuance of the notice; and
(iii) beginning 3 years after August 13, 2018, and each year thereafter, for the 3-year period preceding the issuance of the notice.
(3) Format of past performance information

In the notice required under paragraph (1), the agency shall ensure that the past performance information described under paragraph (1)(B) is set forth separately for each Small business credit for Puerto Rico business and covered territory business described in such paragraph.

(4) Credit for meeting contracting goals

If an agency awards a prime contract to a Small business credit for Puerto Rico business or a covered territory business, or a prime contractor awards a sub-contract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business, during the period beginning on August 13, 2018, and ending on the date that is 4 years after such date, the amount of prime contracts awarded pursuant to section (h)(1), the head of each Federal agency shall, along with the report required under subsec. (g)(1)(A) during such period, be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A) during such period.

(x) Small business credit for Puerto Rico businesses and covered territory businesses

(1) Credit for meeting contracting goals

If an agency awards a prime contract to a Puerto Rico business or a covered territory business, or a prime contractor awards a sub-contract (at any tier) to a subcontractor that is a Puerto Rico business or a covered territory business, during the period beginning on August 13, 2018, and ending on the date that is 4 years after such date, the value of the contract or subcontract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A) during such period.

(2) Report

Along with the report required under subsection (h)(1), the head of each Federal agency shall submit to the Administrator, and make publicly available on the scorecard described in section 868(b) of the National Defense Authorization Act for Fiscal Year 2016 (15 U.S.C. 644 note), an analysis of the number and dollar amount of prime contracts awarded pursuant to paragraph (1) for each fiscal year of the period described in such paragraph.

References in text


Section 702 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (j)(3), is section 702 of Pub. L. 103-355, which is set out below.

Section 868(b) of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (k)(2), is section 868(b) of Pub. L. 114-92, which is set out as a note under this subsection.

Codification

In subsec. (c)(1)(A), “section 8502 of title 41” substituted for “the first section of the Act entitled ‘An


“(iii) have a Level III Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on January 2, 2013, may continue to serve in that position for a period of 5 years without the required certification.”


Subsec. (q)(1). Pub. L. 114–92, § 867(b), inserted “and joint venture” before “requirements” in par. heading.

Subsec. (s)(4) to (6). Pub. L. 114–92, § 862(a), added paras. (4) and (5) and redesignated former par. (4) as (6).


Subsec. (h)(2)(E)(V) to (VIII). Pub. L. 113–201, § 825(b), added subcl. (V) to (VII) and redesignated former subcl. (V) as (VIII).


2013—Subsec. (e)(1). Pub. L. 112–239, § 1623, substituted “a Federal department or agency” for “the various agencies” and “, and each such Federal department or agency shall—” and subpars. (A) and (B) for period at end.


Subsec. (g)(2)(A). Pub. L. 112–239, § 1631(b)(1), inserted at end “Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.”

Subsec. (g)(2)(D). Pub. L. 112–239, § 1631(b)(2), substituted “After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency’s acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontract contracts of such agency, including participation by 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, for “For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women.”

Subsec. (g)(2)(E). (F). Pub. L. 112–239, § 1631(b)(3), added subpars. (E) and (F) and struck out former subpars. (E) and (F) which read as follows—

“(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 657(a) of this title.”

(2) 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 shall—

“(I) have a Level II Acquisition Certification in Contracting; senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

Subsec. (h). Pub. L. 112–239, § 1632, amended subsec. (b) generally. Prior to amendment, subsec. (b) related to annual Federal agency reports to Small Business Administration and inclusion of Administration information in President’s annual state of small business report to Congress.


Subsec. (k). Pub. L. 112–239, § 1691(d), substituted “, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; employee of financial management and program analysis within a Federal agency; employee of the Chief Acquisition Officer; employee of an agency’s contracting office; employee within the office of the Chief Financial Officer; employee within the office of the Chief Information Officer; employee within the office of the Chief Personnel Officer; employee within the office of the Chief Programs Officer; or employee within the office of the Chief Procurement Officer.”

Subsec. (h)(2). Pub. L. 112–239, § 1691(e)(2), substituted “shall be appointed by” for “be appointed by”.

Pub. L. 112–239, § 1691(a), substituted “such agency to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5) except that, for any agency in which the position of Chief Acquisition Officer was not established under section 5332 of such title (including comparability payments under section 5304 of such title);” for “such agency,”.

Subsec. (k)(1). Pub. L. 112–239, § 1691(e)(1), substituted “Director” for “director” and “Secretary’s designee;” for “Secretary’s designee.”

Pub. L. 112–239, § 1691(b), substituted “shall be responsible only to (including with respect to performance appraisals, and report directly and exclusively to, such Secretaries) for “be responsible only to, and report directly to, such Secretaries”.

Subsec. (k)(4). Pub. L. 112–239, § 1691(e)(4), substituted “shall be responsible” for “be responsible” and “such agency;” for “such agency.”

Subsec. (k)(5). Pub. L. 112–239, § 1691(e)(5), substituted “shall identify proposed” for “identify proposed”.

Subsec. (k)(6). Pub. L. 112–239, § 1691(e)(6), substituted “shall assist small” for “assist small”.

Subsec. (k)(7). Pub. L. 112–239, § 1691(e)(7), substituted “shall have supervisory” for “have supervisory” and “this title;” for “this title.”


Subsec. (k)(9). Pub. L. 112–239, § 1691(e)(9), substituted “shall cooperate, and” for “for cooperate, and” and “subsection,” for “subsection,”.

Subsec. (k)(10). Pub. L. 112–239, § 1691(e)(10), substituted “shall make recommendations” for “make rec-
ommendations’, ‘‘subsection (a), section 637(a) of this title, or section 2323 of title 10, which shall’’ for ‘‘sub-
ommendations'', ‘‘subsection (a), section 637(a) of this title or section 2323 of title 10. Such recommendations shall’’, and ‘‘contract file;’’ for ‘‘contract file.’’


Subsec. (l)(1). Pub. L. 112–239, §1621(b), amended par. (1) generally. Prior to amendment, par. (1) read as fol-
ows: ‘‘The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appro-
priate. The breakout procurement center representa-
tive shall carry out the functions described in para-
graph (2), and shall be an advocate for the breakout of items for procurement through full and open competi-
tion, whenever appropriate, while maintaining the in-
tegrity 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.’’

Subsec. (l)(2). Pub. L. 112–239, §1621(c)(1), inserted heading and substituted ‘‘A’’ for ‘‘In addition to car-
ying out the responsibilities assigned by the Administra-
tion, a breakout’’ in introductory provisions.

Subsec. (l)(2)(B). Pub. L. 112–239, §1621(c)(2), substi-
tuted ‘‘review, at any time, barriers to small busi-
ness participation in Federal contracting’’ for ‘‘review, at any time, restrictions on competition’, ‘‘goods and services for “items” and “barriers” for “limitations”.’’

Subsec. (l)(2)(C). Pub. L. 112–239, §1621(c)(3), substi-
tuted ‘‘review barriers to small business partici-
pation in Federal contracting’’ for ‘‘review restrictions on competition’’.

Subsec. (l)(2)(D). Pub. L. 112–239, §1621(c)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: ‘‘review, at any time, barriers to small business participation in Federal contracting 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 procured noncompetitively due to the unavailability of such technical data.’’

Subsec. (l)(2)(E). Pub. L. 112–239, §1621(c)(5), added subpar. (E) and struck out former subpar. (E) which read as follows: ‘‘have access to procurement records and other data of the procurement center commensurate with the level of such representative’s approved sec-
curity clearance classification;’’

Subsec. (l)(2)(F) to (I). Pub. L. 112–239, §1621(c)(6), added subpars. (F) to (I) and struck out former subpars. (F) and (G) which read as follows: ‘‘receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopt-
ed, will result in lower costs to the United States without substantially impeding legitimate acquisition ob-
jectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to per-
sonnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procure-
ment center representative with information regarding the disposition of any such proposal; and’’

‘‘(G) review the systems that account for the acquisi-
tion and management of technical data within the proc-
curement 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.’’

Subsec. (l)(2)(H). Pub. L. 112–239, §1621(d), inserted head-
ing and substituted ‘‘A procurement center representa-
tive’’ for ‘‘A breakout procurement center representa-
tive’’.

Subsec. (l)(4). Pub. L. 112–239, §1621(e), substituted ‘‘procurement center representative’’ for ‘‘breakout procurement center representative’’. 

Subsec. (l)(5). Pub. L. 112–239, §1621(f), inserted par. head-
ing, added subpar. (A), redesignated subpar. (C) as (B), inserted subpar. heading and substituted ‘‘The Ad-
ministrator shall establish personnel positions for pro-
curement center representatives assigned under’’ for ‘‘The Administration shall establish personnel posi-
tions for breakout procurement representatives and ad-
visors assigned pursuant to’’ in subpar. (A), and stri-
ked out former subpars. (A) and (B) which read as follows: ‘‘(A) The breakout procurement center representa-
tives and technical advisers assigned pursuant to this subsection shall be—

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

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

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

Subsec. (l)(6). Pub. L. 112–239, §1621(g), inserted heading and substituted in text ‘‘goods or services, includ-
ing goods or services that are commercially available’’ for ‘‘other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center repre-
sentative’’.

Subsec. (l)(7). Pub. L. 112–239, §1621(h)(1), (2), (4), in-
serted par. heading, inserted subpar. (A), heading, and added subpar. (B). Former par. (7)(B) redesignated (8).

Subsec. (l)(8). Pub. L. 112–239, §1621(h)(3), redesignated subpar. (7)(B) as (8), inserted heading, and substi-
tuted ‘‘A procurement center representative’’ for ‘‘The breakout procurement center representative’’ and ‘‘60’’ for ‘‘sixty’’.

(o) and struck out former subsec. (o) which related to
requirements for performance of contracts by employ-
ees of small business concerns.

report with respect to bundled contracts’’ in heading.

Subsec. (q). Pub. L. 112–239, §1966(a)(2), substituted ‘‘Reports related to procurement center representa-
tives’’ for ‘‘Bundling accountability measures’’ in head-
ing.

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


Subsec. (g)(2). Pub. L. 111–240, §1333, redesignated first to fifth sentences as subpars. (A) to (E), respectively, substi-
tuted ‘‘the participation described in subparagraph (D)’’ for ‘‘such participation’’ in subpar. (E), re-

designated former subpars. (A) and (B) as clis. (i) and (ii), respectively, of subpar. (E), and added subpar. (F).


Subsec. (h)(2). Pub. L. 111–240, §1346, in introductory
provisions, substituted ‘‘submit to the President and the Committee on Small Business and Entrepreneur-
ship of the Senate and the Committee on Small Busi-
ness of the House of Representatives the compilation and analysis, which shall include the following:’’ for ‘‘submit them to the President and the Congress. The Administ-
rator shall transmit to the President the report with respect to bundled contracts’’ in heading.


Subsec. (e)(1). Pub. L. 110–114, §1321(a), redesignated subpar. (A) as (B), inserted subpar. heading, changed title VIII, §806(a), in eighth sentence, substituted ‘‘definition of a
United States industry’ under the North American In-
dustry Classification System, as established’’ for ‘‘four-
digit standard industrial classification codes contained in the Standard Industrial Classification Manual pub-
lished’’.

1999—Subsec. (g)(1). Pub. L. 106–50, §502(a)(3), inserted "qualified HUBZone concerns owned and controlled by service-disabled veterans," after "shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Pub. L. 106–50, §502(a)(2), inserted after second sentence "The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals" for "", by small business concerns owned and controlled by socially and economically disadvantaged individuals in first sentence, was executed by making the insertion for the quoted language which ended with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104–106, §4321(c)(3). See 1996 Amendment note below.


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


1994—Subsec. (c)(2)(A). Pub. L. 103–403, §305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "During each of fiscal years 1989 through 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 $15,000,000 in 1990, not more than $30,000,000 in 1991, not more than $40,000,000 in 1992 and not more than $50,000,000." Subsec. (c)(7). Pub. L. 103–403, §305(2), added par. (7).

Subsec. (e). Pub. L. 103–355, §710(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 partial set-aside;

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

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

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

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

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

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

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

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

(10) concerns which are small business concerns, on the basis of a set-aside; and

(11) concerns which are small business concerns, on the basis of a set-aside.

Subsec. (f). Pub. L. 103–355, §710(a), struck out subsec. (f) which read as follows: "After priority is given to the small business concerns specified in subsection (e) of this section, priority shall be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which:

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

(2) are not small business concerns; and

(3) shall perform a substantial proportion of the production on those contracts and subcontracts with-in areas of concentrated unemployment or under-employment or within labor surplus areas." Subsec. (g)(1). Pub. L. 103–355, §710(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 "small business concerns owned and controlled by socially and economically disadvantaged individuals in first sentence and in sentence beginning with "Notwithstanding the", Pub. L. 103–355, §710(a)(2)(A), inserted after third sentence "The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year."

Subsec. (g)(2). Pub. L. 103–355, §710(a)(2)(B), in first sentence substituted ", by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women" for "and by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women"
§ 644

business concerns owned and controlled by socially and economically disadvantaged individuals.

Pub. L. 100–590, § 933(a), amended subsec. (c), by substituting “section 2323 of title 10” for “section 1207 of title 10”.

Pub. L. 103–355, § 7106(a)(2), substituted “section 1207 of title 10” for “section 2323 of title 10”.

§ 644

Subsec. (a), Pub. L. 101–510 substituted “not in excess of $25,000” for “of less than $25,000”.


Subsec. (m)(1). Pub. L. 100–590, § 133(a), amended par. (1) and added par. (2) as subpars. (A) and (B).

Subsec. (n)(5). Pub. L. 100–590, § 109(a)(2)(B), amended par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.


Subsec. (p)(2). Pub. L. 100–590, § 110(2), amended par. (2) as follows: “have access to the unclassified procurement records and other data of the procurement center;”.


For purposes of this subsection, the term ‘major procurement center’ means a procurement center of the Department of Defense that awarded contracts for items other than commodity items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.'"

Sec. (j)(7), Pub. L. 100–500, § 110(b), added par. (7).

Sec. (m), Pub. L. 100–500, § 601, amended subsec. (m) generally, substituting provisions related to implementation of section 1297 of Pub. L. 99–661 for former provisions related to labor surplus area procurement and manpower programs.


Subsec. (g), Pub. L. 100–180, § 808(a)(2), struck out ‘‘having a value of $25,000 or more’’ after ‘‘procurement contracts of such agency’’.

Pub. L. 100–180, § 890(a)(1), provided for temporarily inserting ‘‘having a value of $25,000 or more’’ after ‘‘procurement contracts of such agency’’. See Effective Date of 1987 Amendments note below.

Subsec. (o)(1), Pub. L. 100–180, § 890(b)(1), substituted ‘‘subsection (a)’’ for ‘‘this subsection’’ in introductory provisions.

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

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

Subsec. (p), Pub. L. 100–180, § 890(c), struck out subsec. (p) which read as follows:

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

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

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

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

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


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


1984—Subsecs. (i), (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 administration and location in labor surplus areas; reenacted par. (2); added par. (3); redesignated former par. (3) as (4); and struck out former par. (4) as to concerns located in labor surplus areas on basis of total set-aside, as covered in par. (1).

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


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


1977—Pub. L. 95–49 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 2017 AMENDMENT

Pub. L. 115–91, div. A, title XVII, § 1703(b), Dec. 12, 2017, 131 Stat. 1906, provided that: ‘‘The Administrator of the Small Business Administration shall be required to report on the information required by clauses (i)(V), (ii)(V), (iii)(V), (iv)(V), (vi)(V), (vii)(V), and (viii)(IX) of section 15(b)(2)(E) of the Small Business Act (15 U.S.C. 644(h)(2)(E)) beginning on the date that such information is available in the Federal Procurement Data System, the System for Award Management, or any new or successor system.’’

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, see section
title xviii, §1803(b), Apr. 7, 1986, 100 Stat. 364, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the nineteenieth day after the date of the enactment of this Act [Apr. 7, 1986].”

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

**Effective Date of 1988 Amendment**


**Effective Date of 1987 Amendment**

Amendment by section 132(c) of Pub. L. 99–272, title XVIII, §18003(b), Apr. 7, 1986, 100 Stat. 933, provided that:

“(1) In general.—Not later than September 30, 2016, the Administrator of the Small Business Administration, in consultation with the Federal agencies, shall—

“(A) develop a methodology for calculating a score to be used to evaluate the compliance of each Federal agency with the goals established pursuant to section 15(g)(1)(B) of the Small Business Act (15 U.S.C. 644(g)(1)(B)) based on each such goal; and

“(B) develop a scorecard based on such methodology.

“(2) Use of scorecard.—Beginning in fiscal year 2017, the Administrator shall establish and carry out a program to use the scorecard developed under paragraph (1) to evaluate whether each Federal agency is creating the maximum practicable opportunities for the award of prime contracts and subcontracts 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, by assigning a score to each Federal agency for the previous fiscal year.

“(3) Contents of scorecard.—The scorecard developed under paragraph (1) shall include, for each Federal agency, the following information:

“(A) A determination of whether the Federal agency met each of the prime contract goals established pursuant to section 15(g)(1)(B) of the Small Business Act (15 U.S.C. 644(g)(1)(B)) with respect 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.

“(B) A determination of whether the Federal agency met each of the subcontract goals established pursuant to such section with respect 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.

“(C) The number 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 awarded prime contracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded contracts during the prior fiscal year, if available.

“(D) The number of small business concerns, small business concerns owned and controlled by service-
disability veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by women awarded subcontracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded subcontracts during the prior fiscal year, if available.

(6) Any other factors that the Administrator deems important to achieve the maximum practicable opportunity for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(7) United States Postal Service or the Government Accountability Office.

(8) DOD.

(9) Proposed.

(10) Agency subcontracting goals are established on the basis of—

(A) A description of any increase in the dollar amount of prime contracts and 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.

(B) A description of any increase in the dollar amount of prime contracts and 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.

(C) The recommendation of the Administrator on continuing, modifying, expanding, or terminating the Goaling Guidelines.

(D) An evaluation of the methodology to calculate a score under this subsection accurately and effectively.

(E) Whether or not the contract is subject to the Federal Acquisition Regulation; and

FEDERAL AGENCY.

(1) Federal 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 are subject to the Federal Acquisition Regulation; and

(2) Any other factors that the Administrator deems important to achieve the maximum practicable opportunity for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(3) The term ‘scorecard’ means any summary using a rating system to evaluate a Federal agency’s efforts to meet goals established under section 15(g)(1)(B) of the Small Business Act (15 U.S.C. 644(g)(1)(B)) that—

(A) includes the measures described in paragraph (3) and

(B) assigns a score to each Federal agency evaluated.

(4) SMALL BUSINESS ACT DEFINITIONS.

(A) The terms ‘small business concern’, ‘small business concern owned and controlled by service-disabled veterans, qualified HUBZone small business concern’, and ‘small business concern owned and controlled by women’ have the meanings given such terms under section 3 of the Small Business Act (15 U.S.C. 632).

(B) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.

(1) The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ includes the measures described in paragraph 3.

(2) The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ has the meaning given that term under section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

ADDITIONAL REQUIREMENTS FOR THE SMALL BUSINESS PREFERENCE PROGRAMS FOR PRIME AND SUBCONTRACT FEDERAL PROCUREMENT GOALS AND ACHIEVEMENTS

Pub. L. 112-299, div. A, title XVI, §1631(c), Jan. 2, 2013, 126 Stat. 2072, provided that: ‘Not later than 180 days after the date of enactment of this part [Jan. 2, 2013], the Administrator of the Small Business Administration shall review and revise the Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements to the extent necessary to ensure that—

(1) agency subcontracting goals are established on the basis of realistically achievable improvements to levels of subcontracting rather than on the basis of an average of previous years’ subcontracting performance;

(2) agency contracting and subcontracting goals are established in a manner that does not exclude categories of contracts on the basis of—

(A) the type of goods or services for which the agency contracts;

(B) in the case of contracts subject to competitive procedures under chapter 33 of title 41, United States Code;
“(3) whenever an agency contracting or subcontracting goal is established at a level lower than the Governmentwide goal for small business concerns or the relevant category of small business concerns, the Administration is required to document the basis for the decision to establish such lower goal.”

**Electronic Procurement Center Representative**

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

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

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

**Small Business Teams Pilot Program**

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

“(a) definitions.—In this section—

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

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

“(A) customer relations and outreach;

“(B) team relations and outreach; and

“(C) performance measurement and quality assurance.

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

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

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

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

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

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

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

**Manufacturing Contracts Through Manufacturing Application and Education Centers**

Pub. L. 103-403, title III, §303, Oct. 22, 1994, 108 Stat. 4188, authorized the Small Business Administration to 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, such authority to terminate on Sept. 30, 1997.

**Pilot Program for Very Small Business Concerns**


**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—

“(A) customer relations and outreach;

“(B) team relations and outreach; and

“(C) performance measurement and quality assurance.

“(B) rule of construction.—Nothing in this section shall be construed 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 an organization 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**


“(a) procurement procedures authorized.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 19(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

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

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

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

“(b) implementation through the Federal Acquisition Regulation.—

“(1) in general.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).
“(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

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

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

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

“(ii) full payment for work performed;

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

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

“(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to such caused a particular industry category to bear a disproportionately share of the contracts awarded to attain the goal established for that contracting activity.

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


Section 745 of this Act [Sept. 27, 2010]; and

Section 743(b) of this Act [Sept. 27, 2010, 124 Stat. 2543.]

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR


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

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

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

Pub. L. 100–590, title I, §133(c), Nov. 3, 1988, 102 Stat. 3006, provided that: “There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affairs [sic] of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled ‘An Act to create a Committee on Purchases of Blind-made Products, and for other purposes’, approved June 25, 1965 (41 U.S.C. 601)”. The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under subsec. 15(c) of the Small Business Act (15 U.S.C. 64(c)) by the May 15, 1965, Business Administration such administrative or statutory changes as it deems appropriate.”
STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

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

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

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

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

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

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

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

Ex. Ord. No. 13157, May 23, 2000, 65 F.R. 34085, provided:

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

SECTION 1. Executive Branch Policy. In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(q)(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.

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

S.D.C. 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 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, the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

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

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

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

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

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

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

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

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

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

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

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

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

S.D.C. 5. Subcontracting Plans. The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the
Small Business Act (15 U.S.C. 637(d)) or section 834 of
including subcontracting plans involving WOSBs.
Section 7. Compliance. Independent agencies are re-
quested to comply with the provisions of this order.
Section 8. Consultation and Advice. In developing the long-
term comprehensive strategies required by section
2 of this order, Federal agencies shall consult with,
seek information and advice from, State and local gov-
ernments, WOSBs, other private-sector partners, and
other experts.
Section 9. Judicial Review. This order is for internal man-
agement purposes for the Federal Government. It does
not create any right or benefit, substantive or proce-
dural, enforceable at law or equity by a party against
the United States, its agencies, its officers, its employ-
ees, or any other person.

WILLIAM J. CLINTON.

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

BY THE AUTHORITY VESTED IN ME AS PRESIDENT OF THE
UNITED STATES OF AMERICA, INCLUDING THE SMALL BUSINESS
634 NOTE), THE OFFICE OF FEDERAL PROCUREMENT POLICY
ACT (FORMERLY 41 U.S.C. 603 ET SEQ.), EXECUTIVE ORDER 11625
(15 U.S.C. 631 NOTE), AND TO PROVIDE FOR INCREASED ACCESS
FOR DISADVANTAGED BUSINESSES TO FEDERAL CONTRACTING
OPPORTUNITIES, IT IS HEREBY ORDERED AS FOLLOWS:

SECTION 1. POLICY. IT IS THE POLICY OF THE EXECUTIVE
BRANCH TO ENSURE NONDISCRIMINATION IN FEDERAL PRO-
CUREMENT OPPORTUNITIES FOR BUSINESSES IN THE SMALL
DISADVANTAGED BUSINESS PROGRAM (SDBS), BUSINESSES IN
THE SECTION 8(a) BUSINESS DEVELOPMENT PROGRAM OF
THE SMALL BUSINESS ADMINISTRATION (SBA), AND MINORITY
BUSINESS ENTERPRISES (MBEs) AS DEFINED IN SECTION 6 OF
EXECUTIVE ORDER 11625, OF OCTOBER 15, 1971, AND TO TAKEN
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, PERMITTED BY LAW, TO INCREASE CONTRACTING
BETWEEN THE FEDERAL GOVERNMENT AND SDBS, 8(a)s, AND
MBEs.

SEC. 2. RESPONSIBILITIES OF EXECUTIVE DEPARTMENTS AND
AGENCIES WITH PROCUREMENT AUTHORITY. THE HEAD OF EACH
EXECUTIVE DEPARTMENT AND AGENCY SHALL CARRY OUT THE
TERMS OF THIS ORDER AND SHALL DESIGNATE, WHERE
APPROPRIATE, HIS OR HER DEPUTY SECRETARY OR EQUIVALENT TO
IMPLEMENT THE TERMS OF THIS ORDER.

(a) Each department and agency with procurement
authority shall:
(i) aggressively seek to ensure that 8(a)s, SDBs, and
MBEs are aware of future prime contracting oppor-
tunities through wide dissemination of contract
announcements, including sources likely to reach 8(a)s,
SDBs, other small businesses, and MBEs. Each
department and agency shall use all available forms
of communication to implement this provision, in-
cluding 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 8(a)s;
(iii) ensure that the price evaluation preference
programs authorized by the Federal Acquisition
Streamlining Act of 1994 (Pub. L. 103–355, see Tables
for classification) are used to the maximum extent
permitted by law in areas of economic activity in
which SDBs have historically been underused;
(iv) aggressively use the firms in the section 8(a)
program, particularly in the developmental stage
of the program, so that these firms have an opportunity
to overcome artificial barriers to Federal contracting
and gain access to the Federal procurement
market;
(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 subcon-
tracting opportunities from 8(a)s and SDBs, and fulfill
their SDB and section 8(d) subcontracting obliga-
tions. Enforcement of SDB subcontracting plan com-
mittments shall include assessment of liquidated
damages, where appropriate, pursuant to applicable
contract clauses;
(vi) encourage the establishment of business-to-
business mentoring and teaming relationships, in-
cluding the implementation of Mentor-Protege pro-
grams, to foster the development of the technical
and managerial capabilities of 8(a)s and SDBs and to fa-
cilitate long-term business relationships;
(vii) offer information, training, and technical as-
sistance programs for 8(a)s and SDBs including,
where appropriate, Government acquisition process
training in order to assist 8(a)s and SDBs in develop-
ing their products, skills, business planning practices,
and marketing techniques;
(viii) train program and procurement officials re-
garding the policy of including 8(a)s and SDBs in Fed-
eral procurement. This includes prescribing proce-
dures to ensure that acquisition planners, to the
maximum extent practicable, structure acquisitions
facilitate competition by SDBs and 8(a)s, including
their participation in the competition of multiple
award requirements;
(ix) provide the information required by the Depart-
ment of Commerce when it requests data to develop
the benchmarks used in the price evaluation pre-
feferece programs authorized by the Federal Acquisi-
tion Streamlining Act of 1994;
(x) ensure that Directors of Offices of Small and
Disadvantaged Business Utilization (SBA) within 90 days of the date of this order:
(x) as required by law, establish with the Small
Business Administration small business goals to en-
sure that the government-wide goal for participation
of small business concerns is not less than 23 percent
of Federal prime contracts. Where feasible and con-
sistent with the effective and efficient performance
of its mission, each agency shall establish a goal of
achieving a participation rate for SDBs of not less
than 5 percent of the total value of prime contract
awards for each fiscal year and of not less than 5
percent of the total value of subcontract awards for each
year. Each agency shall also establish a goal for
awards made to 8(a) firms pursuant to section 8(a)
of the Small Business Act (15 U.S.C. 637(a)). These goals
shall be considered the minimum goals and every ef-
sert 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 im-
plement 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 suffi-
cieney of each plan to carry out the terms of this
order;
(ii) annually, by April 30 each year, assess its ef-
sert and the results of those efforts to increase utili-
§ 644  doing, the Chief Information Officer in each depart-

§ 644  cures in the telecommunications industry. In so

§ 644  and related to information technology, including pro-

§ 644  8(a), SDB, and MBE participation in procurements for

§ 644  ness of an awards program for executive departments

§ 644  or his or her designee, and must be given due consider-

§ 644  dled. The determination of the SBA with regard to the

§ 644  reach specific ethnic and racial audiences. Each depart-

§ 644  for review any contracts that are proposed to be bun-

§ 644  publications and television and radio stations that

§ 644  no reflects in the Federal registration of Federal adver-

§ 644  tions-related procurements. Each department and

§ 644  their 8(a) procurement goals.

§ 644  multiple Award Schedule to count those orders toward

§ 644  contracts of 8(a)s and SDBs. The GSA shall allow agen-

§ 644  actual prime and subcontract awards to 8(a)s and SDBs.

§ 644  Procurement Data System (FPDS), the achievement of

§ 644  of the United States Code, I hereby delegate to the Direc-

§ 644  Section 15(g) of the Small Business Act, as amended

§ 644  for small disadvantaged businesses. The Act also, for

§ 644  under section 101 of Title 41, Public Contracts] author-

§ 644  Department and agency heads should ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

§ 644  Information Technology. Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each depart-

§ 644  and agency shall coordinate with procurement of-

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

§ 644  Bundling Contracts. To the extent permitted by

§ 644  for review any contracts that are proposed to be bun-

§ 644  determination of the SBA with regard to the appro-

§ 644  or his or her designee, and must be given due consider-

§ 644  If there is an unresolvable conflict, then the SBA or

§ 644  the department or agency can seek assistance from the

§ 644  A Awards Program. The Secretary of Commerce and

§ 644  and the Administrator of the SBA shall jointly under-

§ 644  The Federal Acquisition Streamlining Act of 1994

§ 644  shall be presented to the President within 90 days of

§ 644  Applicability. Independent agencies are re-

§ 644  Administration, Enforcement, and Judicial Re-

§ 644  This order shall be carried out to the extent per-

§ 644  is not intended and should not be con-

§ 644  to create any right or benefit, substantive or

§ 644  by law and consistent with the Administration’s

§ 644  priorities and appropriations.

§ 644  This order is not intended and should not be con-

§ 644  to purchase commercial items above the simplified ac-

§ 644  Small Business Administration (SBA) and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs in Federal acquisition-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation’s diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

§ 644  Information Technology. Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each depart-

§ 644  and agency shall coordinate with procurement of-

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

§ 644  Bundling Contracts. To the extent permitted by

§ 644  for review any contracts that are proposed to be bun-

§ 644  determination of the SBA with regard to the appro-

§ 644  or his or her designee, and must be given due consider-

§ 644  If there is an unresolvable conflict, then the SBA or

§ 644  the department or agency can seek assistance from the

§ 644  A Awards Program. The Secretary of Commerce and

§ 644  and the Administrator of the SBA shall jointly under-

§ 644  to purchase commercial items above the simplified ac-

§ 644  shall act promptly to expand inclusion of 8(a)s and

§ 644  Every government-wide and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA’s evaluation;

§ 644  (b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and ag-

§ 644  (c) ensure that each department and agency’s small

§ 644  and SDBs as both prime contract-

§ 644  and the Administrator of the SBA shall jointly under -

§ 644  or his or her designee, and must be given due consider-

§ 644  and related to information technology, including pro-

§ 644  and the United States Code, I hereby delegate to the Direc-

§ 644  the United States, its agencies, its officers, or its employ-

§ 644  Procurement Data System (FPDS), the achievement of

§ 644  shall be presented to the President within 90 days of

§ 644  Applicability. Independent agencies are re-

§ 644  Administration, Enforcement, and Judicial Re-

§ 644  This order shall be carried out to the extent per-

§ 644  is not intended and should not be con-

§ 644  to create any right or benefit, substantive or

§ 644  by law and consistent with the Administration’s

§ 644  priorities and appropriations.

§ 644  This order is not intended and should not be con-

§ 644  to create any right or benefit, substantive or

§ 644  by law and consistent with the Administration’s

§ 644  priorities and appropriations.

§ 644  This order is not intended and should not be con-

§ 644  to create any right or benefit, substantive or

§ 644  by law and consistent with the Administration’s

§ 644  priorities and appropriations.
§ 644a. Small Business Procurement Advisory Council

(a) Establishment

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

(b) Duties

The duties of the Council are—

(1) to develop positions on proposed procurement regulations affecting the small business community;
(2) to submit comments reflecting such positions to appropriate regulatory authorities;
(3) to conduct reviews of each Office of Small and Disadvantaged Business Utilization established under section 644(k) of this title to determine the compliance of each Office with requirements under such section;
(4) to identify best practices for maximizing small business utilization in Federal contracts that may be implemented by Federal agencies having procurement powers; and
(5) to submit, annually, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—
   (A) the comments submitted under paragraph (2) during the 1-year period ending on the date on which the report is submitted, including any outcomes related to the comments;
   (B) the results of reviews conducted under paragraph (3) during such 1-year period; and
   (C) best practices identified under paragraph (4) during such 1-year period.

(c) Membership

The Council shall be composed of the following members:

(1) The Administrator of the Small Business Administration (or the designee of the Administrator).
(2) The Director of the Minority Business Development Agency.
(3) The head of each Office of Small and Disadvantaged Business Utilization in each Federal agency having procurement powers.

(d) Chairman

The Council shall be chaired by the Administrator of the Small Business Administration (or the designee of the Administrator).

(e) Meetings

The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) Consideration of Council comments


CODIFICATION

Section was formerly set out as a note under section 644 of this title.