

107TH CONGRESS
1ST SESSION

S. 861

To enhance small business access to Federal contracting opportunities and provide technical advice and support that small businesses need to perform contracts awarded to them, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2001

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Small Business

A BILL

To enhance small business access to Federal contracting opportunities and provide technical advice and support that small businesses need to perform contracts awarded to them, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Governmentwide Men-
5 tor-Protege Program Act of 2001”.

6 **SEC. 2. MENTOR-PROTEGE PROGRAM.**

7 The Small Business Act (15 U.S.C. 631 et seq.) is
8 amended—

1 (1) by redesignating section 36 as section 37;
2 and

3 (2) by inserting after section 35 the following:

4 **“SEC. 36. MENTOR-PROTEGE PROGRAM.**

5 “(a) ESTABLISHMENT OF PROGRAM.—The Adminis-
6 trator shall establish a Program to be known as the ‘Gov-
7 ernmentwide Mentor-Protege Program’.

8 “(b) PURPOSES.—The purposes of the Program are
9 to provide—

10 “(1) incentives for major Federal contractors to
11 assist eligible small business concerns to enhance the
12 capabilities of eligible small business concerns to
13 perform as subcontractors and suppliers under Fed-
14 eral contracts in order to increase the participation
15 of eligible small business concerns as subcontractors
16 and suppliers under those contracts; and

17 “(2) Governmentwide criteria for partial reim-
18 bursement of certain agency costs incurred in the
19 administration of the Program.

20 “(c) PROGRAM PARTICIPANTS.—

21 “(1) MENTOR FIRMS.—A mentor firm may
22 enter into agreements under subsection (e) and fur-
23 nish assistance to eligible small business concerns
24 upon making application to the head of the agency
25 for which it is contracting and being approved for

1 participation in the Program by the head of the
2 agency.

3 “(2) ELIGIBLE SMALL BUSINESS CONCERNS.—

4 “(A) IN GENERAL.—An eligible small busi-
5 ness concern may obtain assistance from a
6 mentor firm upon entering into an agreement
7 with the mentor firm to become a protege firm,
8 as provided in subsection (e).

9 “(B) RESTRICTION.—A protege firm may
10 not be a party to more than one agreement to
11 receive assistance described in subparagraph
12 (A) at any time.

13 “(3) CERTIFICATION.—

14 “(A) IN GENERAL.—Before receiving as-
15 sistance from a mentor firm under this section,
16 a small business concern shall furnish to the
17 mentor firm—

18 “(i) if the Administration regularly
19 issues certifications of qualification for the
20 category of that small business concern
21 listed in subsection (k)(1), that certifi-
22 cation; and

23 “(ii) if the Administration does not
24 regularly issue certifications of qualifica-
25 tion for the category of that small business

1 concern listed in subsection (k)(1), a state-
 2 ment indicating that it is an eligible small
 3 business concern.

4 “(B) DEVELOPMENT OF CERTIFICATION.—
 5 Nothing in this section shall be construed to re-
 6 quire the Administration to develop a certifi-
 7 cation program for any category of small busi-
 8 ness concern listed in subsection (k)(1).

9 “(C) ASSISTANCE TO NON-ELIGIBLE
 10 SMALL BUSINESS CONCERN.—If at any time, a
 11 small business concern is determined by the Ad-
 12 ministration not to be an eligible small business
 13 concern in accordance with this section—

14 “(i) the small business concern shall
 15 immediately notify the mentor firm of the
 16 determination; and

17 “(ii) assistance furnished to that
 18 small business concern by the mentor firm
 19 after the date of the determination may
 20 not be considered to be assistance fur-
 21 nished under the Program.

22 “(d) MENTOR FIRM ELIGIBILITY.—

23 “(1) IN GENERAL.—Subject to subsection
 24 (c)(1), a mentor firm that is eligible for award of
 25 Federal contracts may enter into an agreement with

1 one or more protege firms under subsection (e) and
2 provide assistance under the Program pursuant to
3 that agreement, if the mentor firm demonstrates to
4 the subject agency the capability to assist in the de-
5 velopment of protege firms.

6 “(2) PRESUMPTION OF CAPABILITY.—A mentor
7 firm shall be presumed to be capable under para-
8 graph (1) if the total amount of contracts and sub-
9 contracts that the mentor firm has entered into with
10 the subject agency exceeds an amount determined by
11 the Administrator, in consultation with the head of
12 the subject agency, to be significant relative to the
13 contracting volume of the subject agency.

14 “(e) MENTOR-PROTEGE AGREEMENT.—

15 “(1) IN GENERAL.—Before providing assistance
16 to a protege firm under the Program, a mentor firm
17 shall enter into a mentor-protege agreement with the
18 protege firm regarding the assistance to be provided
19 by the mentor firm.

20 “(2) CONTENTS OF AGREEMENT.—The agree-
21 ment required by paragraph (1) shall include—

22 “(A) a developmental program for the pro-
23 tege firm, in such detail as may be reasonable,
24 including—

1 “(i) factors to assess the develop-
 2 mental progress of the protege firm under
 3 the Program; and

4 “(ii) the anticipated number and type
 5 of subcontracts to be awarded to the pro-
 6 tege firm;

7 “(B) a Program participation term of not
 8 longer than 3 years, except that the term may
 9 be for a period of not longer than 5 years if the
 10 Administrator determines, in writing, that un-
 11 usual circumstances justify a Program partici-
 12 pation term of longer than 3 years; and

13 “(C) procedures for the protege firm to
 14 terminate the agreement voluntarily and for the
 15 mentor firm to terminate the agreement for
 16 cause.

17 “(f) FORMS OF ASSISTANCE.—A mentor firm may
 18 provide to a protege firm—

19 “(1) assistance using mentor firm personnel,
 20 in—

21 “(A) general business management, includ-
 22 ing organizational management, financial man-
 23 agement, and personnel management, mar-
 24 keting, business development, and overall busi-
 25 ness planning;

1 “(B) engineering and technical matters, in-
2 cluding production, inventory control, and qual-
3 ity assurance; and

4 “(C) any other assistance designed to de-
5 velop the capabilities of the protege firm under
6 the developmental program referred to in sub-
7 section (e)(2)(A);

8 “(2) the award of subcontracts on a non-
9 competitive basis under Federal contracts;

10 “(3) progress payments for performance of the
11 protege firm under a subcontract referred to in
12 paragraph (2), in amounts as provided for in the
13 subcontract, except that no such progress payment
14 may exceed 100 percent of the costs incurred by the
15 protege firm for the performance;

16 “(4) advance payments under subcontracts re-
17 ferred to in paragraph (2);

18 “(5) loans;

19 “(6) cash in exchange for an ownership interest
20 in the protege firm, not to exceed 10 percent of the
21 total ownership interest;

22 “(7) assistance obtained by the mentor firm for
23 the protege firm from—

24 “(A) small business development centers
25 established pursuant to section 21;

1 “(B) entities providing procurement tech-
 2 nical assistance pursuant to chapter 142 of title
 3 10, United States Code; or

4 “(C) a historically Black college or univer-
 5 sity or a minority institution of higher edu-
 6 cation.

7 “(g) INCENTIVES FOR MENTOR FIRMS.—

8 “(1) REIMBURSEMENT FOR PROGRESS OR AD-
 9 VANCE PAYMENT.—The head of the agency for
 10 which a mentor firm is contracting may provide to
 11 a mentor firm reimbursement for the total amount
 12 of any progress payment or advance payment made
 13 under the Program by the mentor firm to a protege
 14 firm in connection with a Federal contract awarded
 15 to the mentor firm.

16 “(2) REIMBURSEMENT FOR MENTORING AS-
 17 SISTANCE.—

18 “(A) MENTOR FIRM.—The head of the
 19 agency for which a mentor firm is contracting
 20 may provide to a mentor firm reimbursement
 21 for the costs of the assistance furnished to a
 22 protege firm pursuant to paragraphs (1) and
 23 (7) of subsection (f), as provided for in a line
 24 item in a Federal contract under which the
 25 mentor firm is furnishing products or services

1 to the agency, subject to a maximum amount of
2 reimbursement specified in the contract, except
3 that this subparagraph does not apply in a case
4 in which the head of the agency determines in
5 writing that unusual circumstances justify reim-
6 bursement using a separate contract.

7 “(B) TOTAL AMOUNT OF REIMBURSE-
8 MENT.—The total amount reimbursed under
9 subparagraph (A) to a mentor firm for costs of
10 assistance furnished in a fiscal year to a pro-
11 tege firm may not exceed \$1,000,000, except in
12 a case in which the head of the subject agency
13 determines in writing that unusual cir-
14 cumstances justify reimbursement of a higher
15 amount.

16 “(C) REIMBURSEMENT TO AGENCY.—The
17 head of an agency may submit documentation
18 to the Administrator indicating the total
19 amount of reimbursement that the agency paid
20 to each mentor firm under this paragraph, and
21 the agency shall be reimbursed by the Adminis-
22 tration for not more than 50 percent of that
23 total amount, as indicated in the documenta-
24 tion.

25 “(3) COSTS NOT REIMBURSED.—

1 “(A) IN GENERAL.—

2 “(i) CREDIT.—Costs incurred by a
3 mentor firm in providing assistance to a
4 protege firm that are not reimbursed pur-
5 suant to paragraph (2) shall be recognized
6 as credit in lieu of subcontract awards for
7 purposes of determining whether the men-
8 tor firm attains a subcontracting participa-
9 tion goal applicable to the mentor firm
10 under a Federal contract or under a divi-
11 sional or companywide subcontracting plan
12 negotiated with an agency.

13 “(ii) SUBJECT AGENCY AUTHORITY.—
14 Clause (i) shall not be construed to author-
15 ize the negotiation of divisional or com-
16 panywide subcontracting plans by an agen-
17 cy that did not have such authority before
18 the date of enactment of the Government-
19 wide Mentor-Protege Program Act of
20 2001.

21 “(B) AMOUNT OF CREDIT.—The amount
22 of the credit given to a mentor firm for unreim-
23 bursed costs described in subparagraph (A)
24 shall be equal to—

1 “(i) 4 times the total amount of the
 2 unreimbursed costs attributable to assist-
 3 ance provided by entities described in sub-
 4 section (f)(7);

5 “(ii) 3 times the total amount of the
 6 unreimbursed costs attributable to assist-
 7 ance furnished by the employees of the
 8 mentor firm; and

9 “(iii) 2 times the total amount of any
 10 other unreimbursed costs.

11 “(C) ADJUSTMENT OF CREDIT.—Under
 12 regulations issued by the Administrator pursu-
 13 ant to subsection (j), the head of the subject
 14 agency shall adjust the amount of credit given
 15 to a mentor firm pursuant to subparagraphs
 16 (A) and (B) of this paragraph, if the head of
 17 the subject agency determines that the perform-
 18 ance of the mentor firm regarding the award of
 19 subcontracts to eligible small business concerns
 20 has declined without justifiable cause.

21 “(h) ADMINISTRATIVE PROVISIONS.—

22 “(1) DEVELOPMENTAL ASSISTANCE.—For pur-
 23 poses of this Act, no determination of affiliation or
 24 control (either direct or indirect) may be found be-
 25 tween a protege firm and its mentor firm on the

1 basis that the mentor firm has agreed to furnish (or
 2 has furnished) to the protege firm pursuant to a
 3 mentor-protege agreement under this section any
 4 form of developmental assistance described in sub-
 5 section (f).

6 “(2) PARTICIPATION IN PROGRAM.—Notwith-
 7 standing section 8, the Administration may not de-
 8 termine an eligible small business concern to be in-
 9 eligible to receive any assistance authorized under
 10 this Act on the basis that the small business concern
 11 has participated in the Program, or has received as-
 12 sistance pursuant to any developmental assistance
 13 agreement authorized under the Program.

14 “(3) ADMINISTRATION REVIEW.—

15 “(A) IN GENERAL.—Upon determining
 16 that the mentor-protege program administered
 17 by the subject agency conforms to the stand-
 18 ards set forth in the rules issued under sub-
 19 section (j)(1), the Administrator may not re-
 20 quire a small business concern that is entering
 21 into, or has entered into, an agreement under
 22 subsection (e) as a protege firm, or a firm that
 23 makes an application under subsection (c)(1),
 24 to submit the application, agreement, or any
 25 other document required by the agency in the

1 administration of the Program to the Adminis-
 2 tration for review, approval, or any other pur-
 3 pose.

4 “(B) EXCEPTION.—The Administrator
 5 may require submission for review of an agree-
 6 ment entered into under subsection (e), or ap-
 7 plication submitted under subsection (c)(1), if
 8 the agreement or application relates to—

9 “(i) a mentor-protege program admin-
 10 istered by the agency that does not con-
 11 form to the standards set forth in the rules
 12 issued under subsection (j)(1); or

13 “(ii) a claim for reimbursement of
 14 costs submitted by an agency to the Ad-
 15 ministration under subsection (g)(2)(C)
 16 that the Administrator has reason to be-
 17 lieve is not authorized under this section.

18 “(i) PARTICIPATION IN PROGRAM NOT TO BE A CON-
 19 DITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—
 20 A mentor firm may not require a small business concern
 21 to enter into an agreement with the mentor firm pursuant
 22 to subsection (e) as a condition for being awarded a con-
 23 tract by the mentor firm, including a subcontract under
 24 a contract awarded to the mentor firm.

25 “(j) REGULATIONS.—

1 “(1) PROPOSED RULES.—Not later than 270
 2 days after the date of enactment of the Government-
 3 wide Mentor-Protege Program Act of 2001, the Ad-
 4 ministrator shall issue final rules to carry out this
 5 section.

6 “(2) PROPOSED RULES FROM THE FEDERAL
 7 ACQUISITION REGULATORY COUNCIL.—Not later
 8 than 180 days after the date of issuance of the final
 9 rules of the Administration under paragraph (1), the
 10 Federal Acquisition Regulatory Council shall publish
 11 final rules that conform to the final rules issued by
 12 the Administration.

13 “(k) DEFINITIONS.—In this section—

14 “(1) the term ‘eligible small business concern’
 15 means—

16 “(A) any qualified HUBZone small busi-
 17 ness concern, as defined in section 3(p)(5);

18 “(B) any small business concern that is
 19 owned and controlled by women, as defined in
 20 section 3(n);

21 “(C) any small business concern that is
 22 owned and controlled by socially and economi-
 23 cally disadvantaged individuals, as defined in
 24 section 8(a)(4); and

1 “(D) any small business concern that is
2 owned and controlled by service-disabled vet-
3 erans, as defined in section 3(q)(2);

4 “(2) the term ‘historically Black college and
5 university’ means any of the historically Black col-
6 leges and universities referred to in section 2323 of
7 title 10, United States Code;

8 “(3) the term ‘mentor firm’ means a business
9 concern that—

10 “(A) meets the requirements of subsection
11 (d); and

12 “(B) is approved for participation in the
13 Program under subsection (c)(1);

14 “(4) the term ‘minority institution of higher
15 education’ means an institution of higher education
16 with a student body that reflects the composition
17 specified in paragraphs (3), (4), and (5) of section
18 312(b) of the Higher Education Act of 1965 (20
19 U.S.C. 1058(b)(3), (4), (5));

20 “(5) the term ‘Program’ means the Mentor-
21 Protege Program established under this section;

22 “(6) the term ‘protege firm’ means an eligible
23 small business concern that receives assistance from
24 a mentor firm under this section; and

1 “(7) the term ‘subcontracting participation
2 goal’, with respect to a Federal Government con-
3 tract, means a goal for the extent of the participa-
4 tion by eligible small business concerns in the sub-
5 contracts awarded under such contract, as estab-
6 lished by the Administrator and the subject agency
7 head, in accordance with the goals established pur-
8 suant to section 15(g).

9 “(l) AUTHORIZATION OF APPROPRIATIONS.—There is
10 authorized to be appropriated to carry out this section
11 \$30,000,000 for each of fiscal years 2002 through 2004.”.

○