

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to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex.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, 1986, 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 of 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. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

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

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

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

PRIOR PROVISIONS

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

§ 644. Awards or contracts**(a) Determination**

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 632(o) of this title) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever

the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency

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

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

(d) Priority

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

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

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

(C) Reduction of costs not determinative

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

(3) Strategy specifications

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

(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(4) Contract teaming

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

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

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

(1) 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.

(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 small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide 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.

(B) **ACHIEVEMENT OF GOVERNMENTWIDE GOALS.**—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

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

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts.

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

(D) 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 veter-

ans, 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.

(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 (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during such fiscal year;

(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—

(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—
 (I) in the aggregate;
 (II) through sole source contracts;
 (III) through competitions restricted to small business concerns; and
 (IV) through unrestricted competition;

(ii) small business concerns owned and controlled by service-disabled veterans—
 (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 service-disabled veterans; and
 (V) through unrestricted competition;

(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; and
 (VI) through unrestricted competition where a price evaluation preference was not used;

(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; and
 (VI) by reason of that concern's certification as a small business owned and controlled by socially and economically disadvantaged individuals;

(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; and
 (V) through unrestricted competition;

(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; and
 (V) through unrestricted competition;

(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; and
 (V) through unrestricted competition; 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; and
 (V) through unrestricted competition; and

(F) for the Federal Government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year 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, provided that such information is publicly available through data systems developed pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), or otherwise available as provided in paragraph (3).

(3) 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, Federal Subcontracting Reporting System, or any new or successor system.

(B) Agency procurement data sources

To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through 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.

(i) Small business set-asides

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

(j) Small business reservation

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

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

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 637 of this title, section 2323 of title 10, section 712¹ of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

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

There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency, 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 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 5332 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 this section and section 637 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,²

(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 this section and section 637 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 this section and section 637 of this title.²

¹ See References in Text note below.

² So in original. The comma probably should be a semicolon.

(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), section 637(a) of this title, or section 2323 of title 10, which shall be made with due regard to the requirements of subsection (m) of this section, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file;

(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, position, or responsibility, except as necessary to carry out responsibilities under this subsection; and

(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 (13) 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; and

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

This subsection shall not apply to the Administration.

(I) 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 paragraph³ (7) and (8) of subsection (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; and

(I) 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) of this section.

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

(5) 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 pro-

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

cured by the major procurement center to which that representative is assigned; and

(iii) 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 January 2, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(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.

(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 representative⁴ 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.

(m) Relationship to other procurement programs

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

(A) establish policies and procedures that insure that there will be no reduction in the number of⁵ dollar value of contracts awarded pursuant to this section and section 637(a) of this title in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used

to implement this section or section 637(a) of this title.

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

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

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

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

(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 657s 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)⁶ In general

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

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

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

(3) Analysis

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

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

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

⁴ So in original. Probably should be “the procurement center representative”.

⁵ So in original. Probably should be “or”.

⁶ So in original. No subpar. (B) has been enacted.

(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 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 requirements**

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

(2) Policies on reduction of contract bundling**(A) In general**

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

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

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

(B) Rationale for contract bundling

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

(3) Reporting

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

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

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

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

(r) Multiple award contracts

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

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

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10

and section 4106(c) of title 41, set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

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

(Pub. L. 85-536, §2[15], July 18, 1958, 72 Stat. 395; Pub. L. 95-89, title V, §502, Aug. 4, 1977, 91 Stat. 562; Pub. L. 95-507, title II, §§221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772; Pub. L. 96-302, title I, §§116, 117, July 2, 1980, 94 Stat. 839; Pub. L. 98-577, title IV, §403(a), Oct. 30, 1984, 98 Stat. 3080; Pub. L. 99-272, title XVIII, §18003(a), Apr. 7, 1986, 100 Stat. 363; Pub. L. 99-500, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)-(e), 922(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-132, 1783-147 to 1783-149, 1783-152, and Pub. L. 99-591, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)-(e), 922(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-132, 3341-147 to 3341-149, 3341-152; Pub. L. 99-661, div. A, title IX, formerly title IV, §§903(d), 921(a), (b)(1), (c)(2)-(e), 922(c), Nov. 14, 1986, 100 Stat. 3912, 3926-3928, 3932, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §10(a)(1), (b)(1), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-180, div. A, title VIII, §809(a)-(c), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 100-496, §12, Oct. 17, 1988, 102 Stat. 2465; Pub. L. 100-590, title I, §§110, 133(a), Nov. 3, 1988, 102 Stat. 2994, 3005; Pub. L. 100-656, title V, §§502, 503, title VI, §§601, 603, Nov. 15, 1988, 102 Stat. 3881, 3887, 3888; Pub. L. 101-37, §§19, 21, June 15, 1989, 103 Stat. 74, 75; Pub. L. 101-510, div. A, title VIII, §806(e)(3), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101-574, title II, §208, Nov. 15, 1990, 104 Stat. 2820; Pub. L. 102-190, div. A, title VIII, §806(d), Dec. 5, 1991, 105 Stat. 1419; Pub. L. 102-366, title II, §232(b), Sept. 4, 1992, 106 Stat. 1002; Pub. L. 102-484, div. A, title VIII, §801(h)(8), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102-569, title IX, §911(b), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103-355, title IV, §4004, title VII, §§7101(a), 7106(a), Oct. 13, 1994, 108 Stat. 3338, 3367, 3374; Pub. L. 103-403, title III, §305, Oct. 22, 1994, 108 Stat. 4189; Pub. L. 104-106, div. D, title XLIII, §4321(c)(3), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105-135, title IV, §413, title VI, §603(b), Dec. 2, 1997, 111 Stat. 2618, 2632; Pub. L. 106-50, title V, §502, title VI, §601, Aug. 17, 1999, 113 Stat. 247, 248; Pub. L. 106-554, §1(a)(9) [title VIII, §§806(a), 810], Dec. 21, 2000, 114 Stat. 2763, 2763A-706; Pub. L. 111-240, title I, §§1312(a), (b), 1331, 1333, 1346, 1347(b)(2), Sept. 27, 2010, 124 Stat. 2537, 2541, 2542, 2546, 2547; Pub. L. 112-239, div. A, title XVI, §§1621, 1623, 1631(a), (b), 1632, 1691, 1696(a), (b)(3), Jan. 2, 2013, 126 Stat. 2067, 2069-2071, 2073, 2087, 2090, 2091; Pub. L. 113-66, div. A, title XVI, §1613, Dec. 26, 2013, 127 Stat. 948.)

REFERENCES IN TEXT

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (h)(2)(F), is Pub. L. 109-282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

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

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

CODIFICATION

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

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

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

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

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

PRIOR PROVISIONS

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

AMENDMENTS

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)(1). Pub. L. 112-239, §1631(a), amended par. (1) generally. Prior to amendment, par. (1) related to annual Government-wide goals for participation of small business concerns in procurement contracts.

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 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.” for “For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually ex-

pand 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 637(a) of this title.

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

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

Subsec. (h). Pub. L. 112-239, §1632, amended subsec. (h) generally. Prior to amendment, subsec. (h) 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. (h)(1)(D). Pub. L. 113-66 added subpar. (D).

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; 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 or 657q of this title. Such officer or employee" for "who shall" in introductory provisions.

Subsec. (k)(1). Pub. L. 112-239, §1691(e)(1), substituted "shall be known" for "be known" and "such agency;" for "such agency;".

Subsec. (k)(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 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 5332 of such title (including comparability payments under section 5304 of such title);" for "such agency;".

Subsec. (k)(3). Pub. L. 112-239, §1691(e)(3), 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, the head" for "be responsible only to, and report directly to, the head" and "be responsible only to (including

with respect to performance appraisals), and report directly and exclusively to, such Secretary" for "be responsible only to, and report directly to, such Secretary".

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)(8). Pub. L. 112-239, §1691(e)(8)(A), substituted "shall assign a" for "assign a" in introductory provisions.

Subsec. (k)(8)(A). Pub. L. 112-239, §1691(e)(8)(B), substituted "the activity; and" for "the activity, and".

Subsec. (k)(9). Pub. L. 112-239, §1691(e)(9), substituted "shall cooperate, and" for "cooperate, and" and "subsection;" for "subsection, and".

Subsec. (k)(10). Pub. L. 112-239, §1691(e)(10), substituted "shall make recommendations" for "make recommendations", "subsection (a), section 637(a) of this title, or section 2323 of title 10, which shall" for "subsection (a) of this section, or section 637(a) of this title or section 2323 of title 10. Such recommendations shall", and "contract file;" for "contract file;".

Subsec. (k)(11) to (16). Pub. L. 112-239, §1691(c), added pars. (11) to (16).

Subsec. (l). Pub. L. 112-239, §1621(a), inserted heading.

Subsec. (l)(1). Pub. L. 112-239, §1621(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section."

Subsec. (l)(2). Pub. L. 112-239, §1621(c)(1), inserted heading and substituted "A" for "In addition to carrying out the responsibilities assigned by the Administration, a breakout" in introductory provisions.

Subsec. (l)(2)(B). Pub. L. 112-239, §1621(c)(2), substituted "review, at any time, barriers to small business 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), substituted "review barriers to small business participation 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: "obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;".

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 security 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:

"(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such

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

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

Subsec. (I)(3). Pub. L. 112-239, § 1621(d), inserted heading and substituted “A procurement center representative” for “A breakout procurement center representative”.

Subsec. (I)(4). Pub. L. 112-239, § 1621(e), substituted “procurement center representative” for “breakout procurement center representative”.

Subsec. (I)(5). Pub. L. 112-239, § 1621(f), inserted par. heading, added subpar. (A), redesignated subpar. (C) as (B), inserted subpar. heading and substituted “The Administrator shall establish personnel positions for procurement center representatives assigned under” for “The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to” in subpar. (B), and struck out former subpars. (A) and (B) which read as follows:

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

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

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

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

Subsec. (I)(6). Pub. L. 112-239, § 1621(g), inserted heading and substituted in text “goods or services, including 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 representative”.

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

Subsec. (I)(8). Pub. L. 112-239, § 1621(h)(3), redesignated subpar. (7)(B) as par. (8), inserted heading, and substituted “A procurement center representative” for “The breakout procurement center representative” and “60” for “sixty”.

Subsec. (o). Pub. L. 112-239, § 1696(b)(3), added subsec. (o) and struck out former subsec. (o) which related to requirements for performance of contracts by employees of small business concerns.

Subsec. (p). Pub. L. 112-239, § 1696(a)(1), substituted “Access to data” for “Database, analysis, and annual report with respect to bundled contracts” in heading.

Subsec. (q). Pub. L. 112-239, § 1696(a)(2), substituted “Reports related to procurement center representatives” for “Bundling accountability measures” in heading.

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

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

Subsec. (g)(2). Pub. L. 111-240, § 1333, designated first to fifth sentences as subpars. (A) to (E), respectively, substituted “the participation described in subpara-

graph (D)” for “such participation” in subpar. (E), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (E), and added subpar. (F).

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

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

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

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

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

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

1999—Subsec. (g)(1). Pub. L. 106-50, § 502(a)(3), inserted “small business concerns owned and controlled by service-disabled veterans,” after “the maximum practicable opportunity for small business concerns,” in penultimate sentence.

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

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

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

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

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

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

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

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

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

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

Subsec. (g)(1). Pub. L. 105-135, § 603(b)(1), inserted “qualified HUBZone small business concerns,” after “small business concerns,” in two places, substituted “not less than 23 percent of the total value” for “not less than 20 percent of the total value”, and inserted after second sentence “The Governmentwide goal for

participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter."

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

Pub. L. 105-135, §603(b)(2)(A), which directed substitution of "by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals" for "by small business concerns owned and controlled by socially and economically disadvantaged individuals" in first sentence, was executed by making the insertion for the quoted language which started with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104-106, §4321(c)(3). See 1996 Amendment note below.

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

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

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

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

Subsec. (c)(7). Pub. L. 103-403, §305(2), added par. (7).

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

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

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

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

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

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

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

"(2) are not small business concerns; and

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

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

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

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

Pub. L. 103-355, §7106(a)(1), in second sentence substituted "small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women" for "and small business concerns owned and controlled by socially and economically disadvantaged individuals".

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

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

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

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

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

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

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

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

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

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

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

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

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

1990—Subsec. (a). Pub. L. 101-574 inserted after second sentence "If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities."

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (l)(6). Pub. L. 100-590, §110(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least \$150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator."

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

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

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

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

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

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

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

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

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

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

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

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

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(a), (b)], Pub. L. 99-661, §921(a), (b), as amended by Pub. L. 100-26, §10(a)(1), amended subsec.

(a) identically, inserting “in each industry category” in cl. (3), and inserting provision identifying an industry category, providing for determination of such category by the Administrator, and permitting segmentation of a market for goods and services under certain circumstances and provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHANGE OF NAME

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

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

ADDITIONAL REQUIREMENTS FOR THE SMALL BUSINESS PREFERENCE PROGRAMS FOR PRIME AND SUB-CONTRACT FEDERAL PROCUREMENT GOALS AND ACHIEVEMENTS

Pub. L. 112-239, div. A, title XVI, §1631(c), Jan. 2, 2013, 126 Stat. 2072, provided that: “Not later than 180 days after the date of the 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—

“(i) whether or not funding for the contracts is made directly available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account; or

“(ii) whether or not the contract is subject to the Federal Acquisition Regulation; and

“(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.”

[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

Pub. L. 103-403, title III, §304, Oct. 22, 1994, 108 Stat. 4188, as amended by Pub. L. 105-135, title V, §508, Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106-554, §1(a)(9) [title V, §503(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695, required the Administrator of the Small Business Administration to establish and carry out a pilot program related to improved access to Federal contract opportunities for very small business concerns beginning not later than Aug. 30, 1995, and expiring on Sept. 30, 2003.

EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS

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

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

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

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

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

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

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

CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESSES

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

“(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section

15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

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

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

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

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

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

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

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

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

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

“(ii) full payment for work performed;

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

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

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

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

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

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL

Pub. L. 103-355, title VII, § 7104, Oct. 13, 1994, 108 Stat. 3369, formerly set out as a note under this section, was transferred to section 644a of this title.

PROCUREMENT PROCEDURES UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Pub. L. 102-366, title II, § 202(h), Sept. 4, 1992, 106 Stat. 996, provided for procurement procedures under the Small Business Competitiveness Demonstration Program Act of 1988 prior to implementation of improve-

ments to the collection of data regarding prime contract awards and of a system for collecting such data.

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

Pub. L. 102-366, title II, § 202(i), Sept. 4, 1992, 106 Stat. 996, required the Administrator for Federal Procurement Policy to issue certain modifications to the test plan and policy direction under the Small Business Competitiveness Demonstration Program Act of 1988.

CONTRACT BUNDLING STUDY

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

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

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

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

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

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

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR

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

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

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

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

Pub. L. 100-590, title I, § 133(c), Nov. 3, 1988, 102 Stat. 3006, provided that: “There is established within the

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

STANDARDS FOR MEASURING COST SAVINGS FROM
BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

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

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

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

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

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

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

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

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

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

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

SEC. 2. *Responsibilities of Federal Departments and Agencies.* Each department and agency (hereafter referred to collectively as "agency") that has procure-

ment 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by

and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-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.

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

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

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

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

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

WILLIAM J. CLINTON.

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

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

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

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

SEC. 2. Responsibilities of Executive Departments and Agencies with Procurement Authority. The head of each executive department and agency shall carry out the terms of this order and shall designate, where appro-

priate, his or her Deputy Secretary or equivalent to implement the terms of this order.

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

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

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

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

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

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

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

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

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

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

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

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

than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)]. These goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

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

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

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

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

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

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

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

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

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

SEC. 6. *General Services Administration Schedules.* The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procure-

ment 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.

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

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

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

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

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

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

WILLIAM J. CLINTON.

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

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

Memorandum for the Director of the Office of Management and Budget

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

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

GEORGE BUSH.

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

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

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

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

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Act note set out under section 101 of Title 41, Public Contracts] authorizes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

§ 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 contracting 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

The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner pursuant to subsection (b)(2).

(Pub. L. 103-355, title VII, §7104, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 112-239, div. A, title XVI, §1692, Jan. 2, 2013, 126 Stat. 2089.)

CODIFICATION

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

Section was enacted as part of the Federal Acquisition Streamlining Act of 1994, and not as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2013—Subsec. (b)(3) to (5). Pub. L. 112-239, §1692(a), added pars. (3) to (5).

Subsec. (c)(3). Pub. L. 112-239, §1692(b), struck out “(established under section 644(k) of this title)” after “Utilization”.

Subsec. (d). Pub. L. 112-239, §1692(c), inserted “(or the designee of the Administrator)” after “Small Business Administration”.

§ 645. Offenses and penalties

(a) False statements; overvaluation of securities

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

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of se-