

dled. 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 securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

#### (c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his

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

#### (d) Misrepresentation, etc.

(1) Whoever misrepresents the status of any concern or person as a “small business concern”, a “qualified HUBZone small business concern”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women”, in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638, 644, or 657a of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,<sup>1</sup> shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3) LIMITATION ON LIABILITY.—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this chapter), or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program defined in chapter 142 of title 10; however nothing in this chapter shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advi-

<sup>1</sup> So in original. Following provision probably should be set flush with par. (1).