

**From:** [Wayne Gatewood, Jr](#)  
**To:** [Wayne Gatewood, Jr](#)  
**Subject:** PL 95-507 - Our OSDBUs and the Law  
**Date:** Monday, June 17, 2013 9:14:49 PM  
**Attachments:** [PL 95-0507 Ammendments to the Small Business Investment Act of 1958.pdf](#)  
[BestViablePractices.com Article on PL 95-507.pdf](#)  
[FCW Article of Aug 8, 2011.pdf](#)

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Greetings good people! Hope you and your loved ones are well. No, no Veterans News this evening. Just a question I am hoping you folks can answer for me. Since my retirement from the Marines Corps back in 1987, and after owning a small business for the past 24 plus years, I find myself asking **why, why, why** in so many instances. Should we really expect the U.S. Government to carry out and enforce the very Laws created to promote federal government procurement and small business growth? I think so...after all, we must abide by the Laws...so why not the Government?

Here is the issue that should concern us all. **Why** are certain procurement and small business laws not being adhered to by certain agencies within our Federal Government? How does this blatant failure to work consistent with small business mandate continue...right out in the open no less. Who cares and who will do something to change it? When we were in the military or after our discharge and retirement, we joined a civilian world wherein we were/are required to live by the law, to adhere to law, to not break the Law.

So....**why** does the Department of Energy OSDBU Director not report directly to the Secretary of Energy or his Deputy as required by Law...Public Law 95-507 of October 24, 1978? We Veteran small business owners and other small business owners must comply with federal procurement laws or we stand to face all types of legal recourse...should not DOE operate under the Law? Should not all Federal Government Agencies have OSDBUs that report directly to their respective Agency Department Heads or their Deputies consistent with PL 95-507? I think so.

Attached for your reading (for you that are interested; you in Congress, you in the Administration, you at OMB, you at the Office of Federal Procurement Policy (OFPP), you fellow Veterans and other small business owners (8(a)s, HUB Zone, WOSBS, etc.) is Public Law 95-507. Of particular note, please see Chapter 3, Section 221, Subsection (k) (1-7) which reads as follows:

" (k) There is hereby established in each Federal agency having pro- *Office of*  
*Small*  
curement powers an office to be known as the 'Office of Small and Dis- *and*  
*Disadvantaged*  
advantaged Business Utilization'. The management of each such office *Business*  
shall be vested in an officer or employee of such agency who shall— *Utilization,*  
*establishment.*

(1) be known as the 'Director of Small and Disadvantaged  
Business Utilization' for such agency,  
(2) be appointed by the head of such agency,  
(3) **be responsible only to, and report directly to, the head of such agency or to**  
*his*  
*deputy,*  
(4) be responsible for the implementation and execution of the

functions and duties under sections 8 and 15 of this Act which relate to such agency, *15 USC 637, 644.*

(5) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8

and 15 of this Act,

(6) assign a small business technical adviser to each office to which the Administration

has assigned a procurement center representative—

"(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

"(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act, and

" (7) 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.

If you go to the following GAO Link you shall discover that historically, DOE has not been the only Federal Government Agency related to this failure to comply with the requirement that the OSDDBU report to the Agency Head or the Deputy.

<http://www.gao.gov/search?q=OSDBU+Reporting+to+Secretary&Submit=Search>

Further, you can take a look at the Attachment "FCW Article of Aug 8, 2011, and see that even then, members of Congress were asking just why our Department OSDDBU's were not reporting directly to their Department Heads or the Deputies. But alas...here we are in 2013 and we still have these issues. **Why?**

Again, why do certain Federal Government Agencies not follow the Law when it comes to this matter?

Currently, the DOE OSDDBU Office and Director fall under the operational control of the Director, DOE Office of Economic Impact and Opportunity, and in particular, Ms. Dot Harris, Director for this Office. As a successfully graduated 8(a) myself, I certainly appreciate the issue of diversity and such, but as a small business person seeking federal government contracts, there is no doubt that given the DOE OSDDBU's reporting hierarchy, he has limited say so in just how the DOE should go about attaining its mandated small business goals....SDVOSBs goals and otherwise. How can you run an operation without the authority to get things done?

When you go to the DOE website to seek information on SDVOSB and other small business procurement, you get lost in a maze of information such as:

Diversity and Inclusion

Minority Economic Impact

Partnering with Minority Serving Institutions

Protecting Civil Rights

Integrating Environmental Justice

Coordinating the Council on Women and Girls

Investing in Minority Banks  
Stem Education  
And more.....

Although all of the above is good and very good, the OSDBU office should not be mingled in with these other missions and programs. The OSDBU is to advocate for small business... period! The OSDBU Director is to report to the Department Head or the Deputy...no deviations thank you. As I believe it is currently, the DOE outlying Labs run their own small business operations and small business operational oversight and such does not directly originate from the OSDBU Director at DOE Headquarters. In those Agencies that have successful small business programs we see that the OSDBU Directors of these Agencies have the immediate support, backing, and direction from the Agency Secretary or the Deputy, thus they are able to get things done and if there are offices within their respective Departments that are not on board and/or refuse to comply...such offices or personnel are reminded by the Department Heads or the Deputies of their responsibilities (and this is what the Law was intended for---to ensure compliance).

So...please join me in calling, faxing, e-mailing, writing to our Congressional Representatives, GAO, the Secretary of the U.S. Department of Energy, OMB, OFPP, and the White House, and requesting that the DOE OSDBU office function under the Law, that the Director report to the DOE Secretary or his Deputy, and the DOE OSDBU and all Agency OSDBUs function in strict compliance with PL 95-507.

Does it make a difference if the Agency has a vibrant, engaging, capable, and committed OSDBU that works directly for the Secretary and/or the Deputy? In the case of DOE let us look at the DOE 2012 small business Figures.

SDVOSBs: 0.3825%  
WOSBs: 1.2426%  
HUBZone: 0.3872%  
8(a): 0.7540%

The above percentages are quite sad my friends and DOE can do better...but they will never do better by sticking the Director of OSDBU below two or three layers of bureaucratic leadership and competing missions that have little to do with small business advocacy and small business goals.

Please join me in asking DOE and the Executive Branch to do the right thing and elevate the OSDBU and its Director to the rightful place under the Law....next to the Secretary of DOE and/or the Deputy. The same goes for all Agencies required to follow this Law...."Free our OSDBUs, cut em lose and let them serve us the way they were meant to serve us!" It is hard enough for our OSDBUs to facilitate the realization of their Agency's small business goals with sequestration, budget unknowns, varying goals, etc.. Why hinder them all the more by not allowing them to have the vested authority and operational capacity consistent with the Law of the Land? Give em a full tool box! ☺

Godspeed all.....Wayne

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### OSDBU Public Law 95-507

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The Office of Small and Disadvantaged Business Utilization (OSDBU) is governed by and administers a number of laws, regulations and policy directives. A brief summary and of these and their application to OSDBU follows:

1. Public Law 95-507, The Small Business Act On October 24, 1978, President Carter signed Public Law 95-507 amending the Small Business Act and the Small Business Investment Act of 1958, making federal procurement contracting more readily accessible to all small businesses. PL 95-507 stipulates that it is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small businesses, small disadvantaged businesses and women-owned businesses. This stipulation also extends to having the maximum practicable opportunity to participate as subcontractors in contracts awarded by any executive agency.

The head of each agency is responsible for effectively implementing the small business programs within his agency, including setting and achieving yearly procurement opportunity program (POP) goals for small and small disadvantaged business contracting.

Office of Federal Procurement Policy (OFPP) Letter No. 79-1, dated March 7, 1979 on the implementation of Section 15(k) of the SBA Act requires each agency with contracting authority to establish an OSDBU, and appoint a director, who reports to the agency head (or deputy), and who will have responsibility for carrying out the purposes of the Act. Specifically the OFPP directs that the position of OSDBU director include the following:

- Responsibility for the implementation and execution of the functions and duties of Section 8 and 15 of the SBA Act. [Section 15 states that a fair proportion of the total purchases and contracts for property and services for the Government are to be placed with small business concerns. Because the law requires the Government to buy at competitive prices, contracts are set-aside only when at least two qualified small businesses are expected to bid. Section 8(a) of the SBA Act authorizes the SBA to enter into contracts with other Federal agencies to supply needed goods and services. SBA then subcontracts the actual performance of the work to small businesses owned and controlled by socially and economically disadvantaged individuals. The objective of the 8(a) program is to assist eligible small firms to become independently competitive.]
- Assigning a small business technical advisor who shall be a full time employee of the procuring activity and whose principal duty shall be to assist the SBA procurement representative in his duties related to Section 8 and 15.
- Cooperate and consult on a regular basis with SBA with respect to carrying out the functions and duties of Sections 8 and 15.
- Developing systematic procedures for insuring the effective execution of the SBA Act, as amended.
- Recommending agency goals.
- Training and education of agency staff whose duties and functions relate to Sections 8 and 15.
- Conducting outreach, liaison, source listings and seminars for small and disadvantaged business.
- Publishing required information brochures and documents.
- Interagency liaison of program procurement activities relating to small and disadvantaged businesses.
- Oversight of the implementation of Section 223(a) of P.L. 95-507. [This section requires that for any contract being let by a Federal agency, the agency will provide to any small business upon request a copy of the bid specifications; the name and telephone number of a employee to answer questions with respect to the contract and adequate citations to each major Federal law or agency rule to which the business must comply in performing the contract.

In addition to these duties, Section 211 of P.L. 95-507 requires the OSDBU to review all subcontractor plans submitted by prime contractors to ensure compliance. This Section directs that the successful offeror or bidder on contracts valued at \$500,000 or more must submit, before an award is made, a subcontracting plan setting percentage and dollar goals for the award of subcontracts to small and disadvantaged businesses.

1. Public Law 100-656, The Business Opportunity Development Reform Act of 1988 Public Law 100-656 amends the SBA Act for the purpose of reforming the Capital Ownership Development (Section 8(a) Program). This legislation basically tightened the requirements of the 8(a) program to among other things, reduce the time it took to enter the program, established time frames for staying in the program and established requirements for GAO program reviews and periodic SBA reviews of 8(a) certified firms. The law established civil penalties in response to documented cases of kickbacks, misrepresentation of minority status and manipulation of the program by majority controlled firms participating in the 8(a) program. , P.L. 100-656 refocused the intent of the program as one of making small and disadvantaged firms more competitive in the marketplace as opposed to merely one of facilitating the award of contracts. The law also set \$5 million and \$3 million as thresholds for



competitive 8(a) grants, established a requirement that agencies publicize to the small business community their annual contracting forecasts and set government wide contracting goals of 20% for small business (increased to 23% by the SBA Reauthorization Act of 1999) and 5% for small disadvantaged business.

2. Federal Acquisition Streamlining Act (FASA) The FASA repeals or substantially modifies more than 225 provisions of law to reduce paperwork burdens, facilitate the acquisition of commercial products, enhances the use of simplified procedures for small purchases and introduces an initiative for doing procurement through electronic data interchange. Specific references to small businesses include:
  - An increased thresholds for small business set-asides. All Federal purchases greater than \$2,500 but not greater than \$100,000 will be reserved for small businesses, unless the contracting officer is unable to obtain offers from two or more capable small firms.
  - A new 5% government wide procurement goal is established for women-owned businesses.
  - The authorization to create a government-wide initiative to give civilian agencies authority to set-aside certain contracts for small disadvantaged businesses (SDB) or to apply a 10% price evaluation for SDBs in unrestricted procurement.
  - Creation of a "Small Business Advisory Council", composed of representatives from Federal agencies to give high level attention and focus to small business procurement issues.
1. Executive Order 11625 President Nixon issued Executive Order 11625 on October 13, 1971 authorizing the Secretary of Commerce to coordinate plans, programs and operations of the Federal government which would affect Minority Business Enterprises (MBE). Heads of Federal agencies are to furnish information, assistance and reports on MBE activity as requested by the Secretary of Commerce as well as develop and implement systematic data collection processes which will provide the Office of Minority Business Enterprise Information Center current data helpful to evaluating and promoting MBE efforts.
2. Executive Order 12138 (WBE) On May 18, 1979, President Carter issued Executive Order 1238 creating a National Women's Business Enterprise Policy and prescribing arrangements for developing, coordinating and implementing a national program for Women's Business Enterprise. The Order directs each Federal agency to take appropriate action to facilitate, preserve and strengthen women's business enterprise by ensuring their participation in all business related activities including procurement. The head of each agency is to designate a high level official to have responsibility for the participation and cooperation of that agency in carrying out the Order.

In addition, the Order established the Interagency Committee on Women's Business Enterprise, with a Chairperson to be appointed by the President and members to include a representative of a number of listed Federal agencies, one of which is HUD. The Committee is to meet quarterly to promote, coordinate and monitor the plans, programs and operations of the departments and establish policies and procedures for implementation, interpretation and application of the Order.

In regard to grants making and cooperative agreements, this Executive Order 12138 directs Federal agencies to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of Women's Business Enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the basis of sex.

1. Executive Order 12432 President Reagan signed Executive Order 12432 on July 14, 1983 directing each Federal agency having substantial procurement or grant making authority to:
  - develop a minority business development plan and establish programs concerning provision of direct assistance, procurement assistance and management and technical assistance to MBEs.
  - establish MBE programs consistent with Section 211 of P.L. 95-507 to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.
  - encourage recipients of Federal grants and cooperative agreements to achieve reasonable minority business participation in contracts let as a result of its grants and agreements.
  - furnish an annual report regarding the implementation of their program to the Secretary of Commerce.
1. Executive Order 12928 President Clinton signed Executive Order 12928 on September 16, 1994 promoting procurement with small businesses owned and controlled by socially and economically disadvantaged individuals, Historically Black Colleges and Universities (HBCU) and Minority Institutions (MI). Federal agencies are to assist these entities to develop viable, self sustaining businesses capable of competing on an equal basis in the mainstream of the economy. The Executive Order establishes a contracting goal of 5% for these entities but mainly reaffirms existing laws, Executive Orders and regulations relevant to minority participation while chastising some Federal agencies for not aggressively supporting them. The Order devotes an entire Section to OSDBU, reaffirming the legal requirement that it report to the Secretary or Deputy and that agencies comply with OFPP letter No. 79-1 which provides guidance on Sec 15k of the SBA Act and the organizational placement and functions of the OSDBU.
2. Historically Underutilized Business Zone (HUBZone) Program The HUBZone Act of 1997, Title VI of Public Law 105135, created the HUBZone Program. This program provides Federal contracting opportunities for qualified small business concerns located in economically distressed communities. The goal of the HUBZone Program is to provide federal contracting assistance for qualified small business concerns located in HUBZone areas in



order to increase employment opportunities, stimulate capital investments in those areas, and empower communities through economic leveraging. HUDZone areas, which roughly correspond with the census tracts for which there are low income housing tax credits, are determined by census track data including income levels, unemployment rates and Native American reservation boundaries. In order to qualify as a HUBZone business, the business must be small; owned by a US citizen; the principal office must be located in a HUBZone; and at least 35% of the employees must reside in a HUBZone. The SBA formally certifies firms as HUBZone businesses. HUBZone businesses can receive sole-source or set-aside federal contracts or receive a price preference up to 10% when competing for full and open competition procurements. A HUBZone firms must have its principal office in the HUBZone. The principal office must be the location where the greatest number of the company's employees works. The HUBZone program is race, ethnicity and gender neutral. The federal goal for HUBZone contracts was 1% for Fiscal Year 1999, rising by one half percent per year to a maximum of 3% in 2003.

3. Veteran-owned Small Businesses Public Law 106.50, the Veterans Entrepreneurship and Small Business Development Act of 1999, amended the Small Business Act by adding Small Businesses owned and controlled by service-disabled veterans to the categories of small businesses for which the federal agencies develop prime contract goals. Federal agencies also establish goals and collect data regarding subcontracts awarded by prime contractors to veteran-owned small businesses. Small businesses owned by service-disabled veterans are small businesses that are at least 51 percent owned and controlled by one or more service-disabled veterans or in the case of a veteran with permanent or severe disability, the spouse or permanent caregiver of such veteran. P.L. 106.50 established a 3% goal for government contracting with businesses owned by service disabled veterans. No specific goal is identified for sub contracting with businesses owned by veterans.

Federal Acquisition Regulation (FAR) The FAR establishes uniform policies and procedures for acquisition (procurement). FAR Part 19 establishes policy regarding small businesses and small disadvantaged businesses including subcontracting requirements for contracts valued at \$500,000 or more and actions necessary to strengthen WBEs. While the FAR elaborates on P.L. 95-507, it cites one significant additional role in discussing OSDBU responsibilities. Specifically, OSDBU is to make recommendations as to whether a particular acquisition should be awarded as a set-aside or 8(a) award. Furthermore, the contracting officers shall consider recommendations of the OSDBU and will document the contract file whenever the OSDBU Director's recommendations are not accepted.

1. HUD Acquisition Regulations (HUDAR) HUDAR, dated January 21 2000, Parts 2419 and 2426 describe HUD's procurement policy regarding small and small and disadvantaged businesses, set-asides for small businesses, subcontracting with small businesses and small disadvantaged businesses and contracting opportunities for women-owned businesses. In regard to MBE participation in its procurement programs, the HUDAR describes HUD policy toward voluntary certification by contractors, bidders, or offerors as to their MBE status and the role of the OSDBU.
2. 24 CFR, Part 85 Section 36(e), dated May 1996 This portion of the CFR provides the required affirmative steps HUD grantees and subgrantees shall take to assure that minority firms are used when possible.

#### 85.36 Procurement

(e)"Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1)The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. (2) Affirmative steps shall include:

- (i)Placing qualified small and minority business enterprises on solicitation lists;
- (ii)Assuring that small and minority businesses are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible to permit maximum participation by small and minority business and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
- (v) Using the services of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e) (2)(i) through (v) of this section.

1. HUD Handbook 2210.3 Revision 3, "Procurement Policies and Procedures" Chapter 3 of the Handbook contains implementing policies and procedures regarding socioeconomic procurement programs.
2. Minority Media The Department buys advertising for Fair Housing billboard displays, the Property Disposition Program, Section 202 Housing for the Elderly and other program activities. The total expenditures for advertising under these activities and the portion of total dollars spent with the minority media is reported semi-annually to OSDBU.
3. Regulatory Flexibility Act, Public Law 96-354 Congress passed P.L. 96-354 on September 19, 1980. Its purpose is to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The Act defines "small business" as having the same meaning as is found in the Small Business Act; "small organization" as any not for profit enterprise which is independently owned and not dominant in its field and; "small governmental jurisdiction" as the government



of cities, counties, towns, townships, villages, school districts or special districts with a population of less than fifty thousand.

Unless the agency head certifies that the proposed rule will not have a significant impact on any small business or organization or that uniform requirements are mandated by statute, the Act requires Federal agencies to add the following information to that currently required when an agency publishes in the Federal Register general Notice of Proposed Rulemaking:

- a description of an estimate of the number of individuals, businesses, organizations and governmental jurisdictions to which the proposed rule would apply;
- a statement that the agency will seek and consider alternatives to the proposed rule which would substantially reduce the economic impact on individuals, small businesses, small organizations and small governmental jurisdictions;
- an agency prepared analysis of the proposed rule which constitutes a preliminary agency assessment of the impact of the proposed rule on individuals, small businesses, small organizations and small governmental jurisdictions. The analysis must contain a description of alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize the significant economic effect of the rule on such individuals, businesses, organizations and governments. [The final rule requires "a description of any alternative proposals to the proposed rule which were considered and a statement of the reasons for adopting the final rule rather than any of the alternative proposals which would have had a lesser adverse economic impact".]
- a statement as to the record keeping requirements the agency anticipates requiring, including their purpose, form, length, proposed use, the skills necessary to prepare the information and an estimate of the time required to comply.

Congress passed P.L. 96-354 because it felt Executive Order 12044, issued in March 1978 on the subject of "Improving Government Regulations" didn't go far enough to reduce the burden of regulation on small entities since the Order did not improve public participation in the process or provide for an assessment of alternative regulatory strategies in light of their impact on small concerns. regulations.

1. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) On March 29, 1996 President Clinton signed Public Law 104-121, the SBREFA. The Act reinforces the requirements of the Regulatory Flexibility Act (RFA) with the significant addition of the provision that permits judicial review of agencies' compliance with the RFA. Since the RFA's passage, small business advocates have told Congress that many agencies neglected to comply with the law because there were no provisions in the original legislation for enforcement. The SBREFA now provides that if an agency fails to comply with the RFA in its Rulemaking, a small business that is adversely affected or aggrieved may seek review by the courts. The court can invalidate rules with inappropriate regulatory flexibility analyses or rules that have been improperly certified as having no significant effect on small businesses.

To bolster a small business' access to information, agencies are required to establish a program for responding to small business requests for informal guidance on specific rules, and to develop "small entity compliance guides". As the name implies, the guides are intended to explain the actions a small entity is required to take to comply with a rule. The program for informal guidance is to be established by March 29, 1997 with a progress report due to Congress by March 29, 1998. Both the informal guidance and the compliance guides may be considered as evidence of the reasonableness of any proposed fines or penalties in any civil or administrative action challenged by a small entity.

1. Section 223 of the SBREFA requires each agency regulating the activities of small entities to establish a policy or program by March 29, 1997, to reduce or, where appropriate, waive civil penalties against small entities for violations of a statutory or regulatory requirement. It also requires a progress report to Congress by March 29, 1998 on the scope of the policy or program, the number of enforcement actions that qualified or failed to qualify for the policy or program and the total amount of penalty reductions and waivers. In practice, the programs mostly likely to have a regulatory impact on small business are Manufactured Housing, RESPA, Interstate land sales, Lead Based Paint Abatement and Fair Housing.

Executive Order 12866 President Clinton signed Executive Order 12866, "Regulatory Planning and Review" on September 30, 1993 with the intent of making the regulatory process more efficient. In addressing the Principles of Regulations, Section 1 (11) states that each agency shall tailor its regulations to impose the least burden on society including individuals, businesses of differing sizes and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, the cost of cumulative regulations.

Section 3 of the Housing and Community Development Act of 1992. Section 3 requires that when HUD Federal assistance generates the need for the recipient of HUD funding to increase internal employment or let contracts, the recipient must give preference in hiring to low and very low income persons and must give preference in contracting to businesses owned by these persons or that substantially employ low and very low income persons.



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# Congressman questions agencies on small-business advocates' authority

By [Matthew Weigelt](#) Aug 08, 2011

Senior executives at several Cabinet-level departments received letters Aug. 5 that asked why their small-business advocacy offices have not been given the authority the law dictates.

Rep. Mick Mulvaney (R-S.C.), chairman of the Small Business Committee's Contracting and Workforce Subcommittee, wants to know why departments' office of small and disadvantaged business utilization (OSDBU) officials don't have access to top officials to deal with small-business problems, such as contract bundling and paying firms promptly.

The Small Business Act requires that heads of a department's OSDBU should "be responsible only to, or report directly to, the head of such agency or to the deputy of such head."

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[Government gets a B in 2010 small-business contracting](#)

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It's not happening, according to a Government Accountability Office [report](#) from June.

Only nine of the 16 federal agencies that GAO reviewed were in compliance with that part of the Small Business Act. The remaining seven agencies failed to comply with the law. Those agencies' OSDBU directors reported to lower-level officials or had delegated OSDBU responsibilities to officials who did not meet the reporting requirement, GAO wrote.

Further, these agencies were not in compliance when GAO last examined them in 2003.

In GAO's latest review, Social Security Administration officials said they fixed the problem. Officials at the Interior Department agreed to re-evaluate their reporting structure.

On the other hand, the Commerce, Justice, State and Treasury departments disagreed with GAO, saying they were in compliance. The Agriculture Department also got a letter because officials delegated the OSDBU director's authority in a way that was contrary to the law.

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Mulvaney wants to know more details about each agencies' OSDBU, including the assigned functions and budget. He also asked when the OSDBU will actually have access to top officials, in addition to a copy of the new organizational chart. He expects responses by Aug. 31.

The subcommittee is planning a hearing in September to look further into this situation.

**About the Author**

Matthew Weigelt is a former FCW senior writer who covered acquisition and procurement.

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## Reader Comments

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Tue, Aug 9, 2011 | Small Business VP

What better way to keep those pesky small businesses under tight control by muzzling their agency advocates by placing them in less-than-influential places in an agency's bureaucracy. It's pretty evident to even the most casual observer which agencies have vibrant and (taxpayer) beneficial small business programs versus which agencies do not.

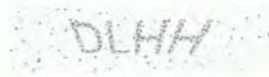
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Public Law 95-507  
95th Congress

An Act

To amend the Small Business Act and the Small Business Investment Act of 1958.

Oct. 24, 1978

[H.R. 11318]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Small Business  
Act and Small  
Business  
Investment Act of  
1958,  
amendment.

TITLE I—AMENDMENTS TO THE SMALL BUSINESS  
INVESTMENT ACT OF 1958

CHAPTER 1

SEC. 101. Section 303(c) (1) of the Small Business Investment Act of 1958 is amended to read as follows:

Purchase and  
guarantee  
operations.  
15 USC 683.

“(1) shares of nonvoting stock (or other corporate securities having similar characteristics), provided—

“(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

“(ii) on liquidation of redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (i) of this paragraph;

“(iii) the purchase price shall be at par value and, in any one sale, \$50,000 or more; and

“(iv) the amount of such securities purchased and outstanding at any one time shall not exceed—

“(A) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or

“(B) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than \$500,000, 100 per centum of such capital and surplus, or

“(C) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of \$500,000 or more, 200 per centum of such capital and surplus.

“The amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (A) or (C) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities. For the purposes of the subsection, the term ‘equity securities’ means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint ventures for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.”

“Equity  
securities.”

SEC. 102. The last sentence of section 308(b) of the Small Business Investment Act of 1958 is amended to read as follows: “Such com-

15 USC 687.

panies are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.”

Repeal.  
15 USC 687i.  
15 USC 681.

SEC. 103. The last sentence of section 317 of the Small Business Investment Act of 1958 is repealed.

SEC. 104. Section 301(d) of the Small Business Investment Act of 1958 is amended by inserting “or formed as a limited partnership,” immediately after “statutes.”

Capital requirements for small business investment companies.  
15 USC 682.

SEC. 105. Section 302(a) of the Small Business Investment Act of 1958 is amended to read as follows:

“SEC. 302(a). The combined private paid-in capital and paid-in surplus of any company licensed pursuant to sections 301(c) and (d) of this Act shall not be less than \$150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1979 pursuant to sections 301(c) and (d) of this Act shall be not less than \$500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.”

#### CHAPTER 2

15 USC 694a.

SEC. 110. Section 410(4) of the Small Business Investment Act of 1958 is amended by—

(1) deleting the word “or” after the phrase “conditions of the contract;” and

(2) deleting the period after the phrase “fails to make prompt payment” and inserting in lieu thereof “, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.”

Surety bond guarantees.  
15 USC 694b.

SEC. 111. Section 411 of the Small Business Investment Act of 1958 is amended to read as follows:

“SEC. 411. (a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety (the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration’s experience with the particular surety) against loss, as hereinafter provided, as the result of a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to \$1,000,000, subject to the following conditions:

“(1) the person who would be the principal of the bond is a small business concern;

“(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

“(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section;

“(4) the Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required;

“(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost; and



“(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety’s participation.

“(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): *Provided, however—*

“(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

“(2) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety’s loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable; and

“(3) no new agreements to indemnify shall be entered into pursuant to this subsection subsequent to two years after the date of its enactment.

“(c) Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 per centum of the loss incurred and paid by the surety to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract as the result of the breach; or (2) in a case to which subsection (b) applies, the amount determined under subsection (b).

“(d) The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

“(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

“(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

“(2) the total contract amount at the time of execution of the bond or bonds exceeds \$1,000,000.

“(f) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

“(g) The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration’s guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

“(h) The Administration shall administer this Part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

“(i) The provisions of section 402 shall apply in the administration of this section.”

Limitation.

Limitation.

Regulations.

Audit.

Administration.

15 USC 693.

Community  
injection funds.  
15 USC 696.

SEC. 112. Section 502 of the Small Business Investment Act of 1958 is amended by adding at the end of paragraph (4) the following new sentence: "Community injection funds may be derived, in whole or in part, from—

- "(A) State or local governments;
- "(B) banks or other financial institutions;
- "(C) foundations or other not-for-profit institutions; or
- "(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title."

## TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT

### CHAPTER 1

15 USC 631.

SEC. 201. Section 2 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(e) (1) with respect to the Administration's business development programs the Congress finds—

"(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

"(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

"(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities;

"(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

"(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

"(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

"(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

"(2) It is, therefore, the purpose of section 8 (a) to—

"(A) foster business ownership by individuals who are both socially and economically disadvantaged;

"(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

"(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns

Post, p. 1761.



owned by socially and economically disadvantaged individuals.”

SEC. 202. (a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended to read as follows:

Procurement  
contracts.

“SEC. 8. (a) (1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

“(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer 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;

“(B) to enter into contracts with such agency, as shall be designated by the President within 60 days after the effective date of this paragraph, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and

“(C) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

“No contract may be entered into under subparagraph (B) after September 30, 1980.

Performance  
bonds.

"(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition of receiving any sub-contract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

"(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

"(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

"(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

"(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

"This paragraph shall not apply after September 30, 1980.

"(3) Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"(4) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern—

"(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(B) whose management and daily business operations are controlled by one or more of such individuals.

"(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

"(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit

"Socially and  
economically  
disadvantaged  
small business  
concern."

Socially  
disadvantaged  
individuals.

Economically  
disadvantaged  
individuals.



and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

“(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1) (C) and has reasonable prospects for success in competing in the private sector.

“(8) All determinations made pursuant to paragraphs (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

“(9) Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5, United States Code.

“(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

“(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

“(12) To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.”

(b) Not later than June 30, 1980, the General Accounting Office shall submit to the Congress a report which, with respect to provisions of paragraphs (1) (B) and (2) of section 8(a) of the Small Business Act, shall evaluate the implementation of such provisions and whether such implementation furthered the purposes under section 2(e) of the Small Business Act.

SEC. 203. Section 2(c) of the Small Business Act is amended by inserting “(1)” after “(c)” and by adding at the end thereof the following new paragraph:

“(2) (A) With respect to the programs authorized by section 7(j) of this Act, the Congress finds—

“(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

“(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

“(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

Determinations.

Publication in Federal Register.

Annual estimate.

Report to Congress.  
15 USC 637 note.  
*Ante*, p. 1761.

*Ante*, p. 1760.

15 USC 631.

*Post*, p. 1764.

“(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.

*Ante*, p. 1761.

“(v) that the power to let sole source Federal contracts pursuant to section 8(a) of the Small Business Act can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

“(vi) that the procurement authority under section 8(a) of the Small Business Act shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

*Infra*.

“(B) It is, therefore, the purpose of the programs authorized by section 7(j) of this Act to—

“(i) foster business ownership by individuals in groups that own and control little productive capital; and

“(ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.”

15 USC 636.

SEC. 204. Section 7(j) of the Small Business Act is amended to read as follows:

Technical and management assistance.

“(j)(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

“(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

“(A) planning and research, including feasibility studies and market research;

“(B) the identification and development of new business opportunities;

“(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), (7)(j)(10), and 8(a) of this Act;

“(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

“(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

Subcontract placement with businesses located in certain areas.

“(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small



businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of this Act.

*Ante*, p. 1761.

“(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.

15 USC 636.  
*Ante*, p. 1764.  
Advisory committee, establishment, Membership.

“(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

Report to Congress.

“(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

“(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

Grants and contracts.

“(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

“(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

“(8) The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections 7(i), 7(j), and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.

Program evaluation.

Report to Congress.

“(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

“(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the ‘Program’) which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The management of the Program shall be vested in the Associate Administrator for Minority Small

Small business and capital ownership development program, establishment.

Business and Capital Ownership Development who shall also manage all other services and activities authorized under sections 7(j) and 8(a) of this Act.

*Ante*, pp. 1764, 1761.

“(A) The Program shall—

“(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals;

“(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

“(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

“(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

“(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

“(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

15 USC 694a.

“(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

“(C) No small business concern shall receive a contract pursuant to section 8(a) of this Act unless the Program is able to provide such small business concern with, but not limited to, such management, technical, and financial services as may be necessary to promote the competitive viability of the small business concern within a reasonable period of time.

Responsibilities.

“(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.”

15 USC 636.

SEC. 205. Section 7(k) of the Small Business Act is amended by striking the words “7(i) and 7(j)” and inserting in lieu thereof “7(i), 7(j), and 8(a)”.

15 USC 633.

SEC. 206. Section 4(b) of the Small Business Act is amended by striking “Associate Administrator for Minority Small Business” where it appears therein and by substituting the following: “Associate Administrator for Minority Small Business and Capital Ownership Development”.



SEC. 207. Nothing in this chapter is intended to duplicate or limit any programs or projects administered by the Department of Commerce.

15 USC 647 note.

## CHAPTER 2

SEC. 211. Section 8(d) of the Small Business Act is amended to read as follows:

Contract opportunities for certain small business concerns.  
15 USC 637.

“(d) (1) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

“(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

“(A) does not exceed \$10,000;

“(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

“(C) is for services which are personal in nature.

“(3) The clause required by paragraph (2) shall be as follows:

“(A) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

“(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

“(C) As used in this contract, the term “small business concern” shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term “small business concern owned and controlled by socially and economically disadvantaged individuals” shall mean a small business concern—

Definitions.

15 USC 632.

“(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

“(ii) whose management and daily business operations are controlled by one or more of such individuals.

“(The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

“(D) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.’

“(4) (A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

“(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

“(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

“(ii) is required to include the clause stated in paragraph (3),

“(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and

“(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

“(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

“(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract.

“(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

“(5) (A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

“(i) is to be awarded pursuant to the formal advertising method of procurement,

“(ii) is required to contain the clause stated in paragraph (3) of this subsection,

“(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and

“(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a sub-

Incentives for  
small business  
subcontracting.

Subcontracting  
plans.



contracting plan which incorporates the information prescribed in paragraph (6).

“(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

“(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

“(A) percentage goals for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

“(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

“(C) a description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

“(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5);

“(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

“(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

“(7) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

“(8) The failure of any contractor or subcontractor to comply in good faith with—

“(A) the clause contained in paragraph (3) of this subsection,

or

“(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract,

shall be a material breach of such contract or subcontract.

Breach of  
contract.

“(9) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

“(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

“(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

Review.

“(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

Subcontracting plans, compliance evaluation.

“(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis.

Report to congressional committees.

“(11) At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.”

### CHAPTER 3

15 USC 644.

SEC. 221. Section 15 of the Small Business Act is amended by adding at the end of subsection (f) the following new subsections:

“(g) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, and by small business concerns owned and controlled by socially and economically disadvantaged individuals, in procurement contracts of such agency having values of \$10,000 or more. 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 and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination.

Reports to Small Business Administration.

“(h) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. The Administration shall submit to the Select Committee on Small Business of the Senate and

Submittal of information to congressional committees.



the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.

“(i) Nothing in this Act 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) Each contract for the procurement of goods and services which has an anticipated value of less than \$10,000 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.

Small purchase  
procedures.

“(k) There is hereby established in each Federal agency having procurement powers an office to be known as the ‘Office of Small and Disadvantaged Business Utilization’. The management of each such office shall be vested in an officer or employee of such agency who shall—

Office of Small  
and Disadvantaged  
Business  
Utilization,  
establishment.

“(1) be known as the ‘Director of Small and Disadvantaged Business Utilization’ for such agency,

“(2) be appointed by the head of such agency,

“(3) be responsible only to, and report directly to, the head of such agency or to his deputy,

“(4) be responsible for the implementation and execution of the functions and duties under sections 8 and 15 of this Act which relate to such agency,

15 USC 637,  
644.

“(5) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act,

“(6) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

“(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

“(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act, and

“(7) 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.

“This subsection shall not apply to the Administration.”.

SEC. 222. The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by Public Law 93-400 and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and

Uniform Federal  
procurement  
regulations and  
procedures.  
41 USC 405a.  
41 USC 401 note.

incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

Information  
availability.  
15 USC 637b.

SEC. 223. (a) For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Subsection (a) shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

Definitions.  
15 USC 637c.

SEC. 224. (a) For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office; and

(3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

15 USC 632.

(b) Section 3 of the Small Business Act is amended by inserting "(a)" after "Sec. 3." and by adding at the end thereof the following new subsection:

"(b) For purposes of this Act, any reference to an agency or department of the United States, and the term 'Federal agency', shall have the meaning given the term 'agency' by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office."

#### CHAPTER 4

15 USC 636.

SEC. 231. Section 7(a) of the Small Business Act is amended by inserting after the phrase "The Administration is empowered to make loans to enable small-business concerns" the phrase "or small-business concerns 100 percent owned and controlled by an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act,".

25 USC 450b.  
15 USC 644.

SEC. 232. Section 15(f) of the Small Business Act is amended by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1980".

Report to  
congressional  
committees.

SEC. 233. Section 15 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(1) (1) The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and the Committee on Armed Services of the Senate and to the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement program under this section and the manpower policy described in subparagraph (D).



Such report, together with recommendations, shall include, but not be limited to—

“(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

“(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in Federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

“(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available, and its impact on contract costs to the Federal Government; and

“(D) with respect to the implementation by the Department of Defense of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.

Approved October 24, 1978.

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LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-949 (Comm. on Small Business) and No. 95-1714 (Comm. of Conference).

SENATE REPORTS: No. 95-1070 (Select Comm. on Small Business) and No. 95-1140 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Mar. 20, considered and passed House.

Sept. 15, considered and passed Senate, amended.

Oct. 6, House agreed to conference report.

Oct. 10, Senate agreed to conference report.