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118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
118–383

THE WOSB INTEGRITY ACT OF 2024

FEBRUARY 13, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7128]

The Committee on Small Business, to whom was referred the bill (H.R. 7128) to establish requirements relating to size standard compliance of small business concerns owned and controlled by women for certain purposes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

		Page
I.	Purpose and Bill Summary	2
II.	Need for Legislation	2
III.	Hearings	2
IV.	Committee Consideration	3
V.	Committee Votes	3
VI.	Section-by-Section of H.R. 7128	6
VII.	Congressional Budget Office Cost Estimate	6
VIII.	New Budget Authority, Entitlement Authority, and Tax Expenditures	6
IX.	Oversight Findings & Recommendations	6
X.	Performance Goals and Objectives	7
XI.	Statement of Duplication of Federal Programs	7
XII.	Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	7
XIII.	Federal Mandates Statement	7
XIV.	Federal Advisory Committee Statement	7
XV.	Applicability to Legislative Branch	7
XVI.	Statement of Constitutional Authority	7
XVII.	Changes in Existing Law Made by the Bill, as Reported	7
XVIII.	Minority Views	41

49–006

I. PURPOSE AND BILL SUMMARY

On January 30, 2024, Rep. Maloy, along with Rep. Scholten, introduced H.R. 7128. The purpose of H.R. 7128, the "WOSB Integrity Act of 2024," is to ensure that the U.S. Small Business Administration (SBA) develops processes and procedures to ensure that applicants in the SBA Women Owned Small Business (WOSB) program are small businesses.

II. NEED FOR LEGISLATION

The SBA Office of Inspector General (OIG) found that the SBA does not have processes in place to ensure that WOSB applicants are in fact small businesses. Women small business owners certified in the WOSB contracting program deserve the peace of mind that other certified firms are actually small businesses. The SBA currently allows firms applying for certification to self-certify that they are a small business. This loophole could lead to fraud, and negatively impact truly small businesses owned by women entrepreneurs.

The intent of this bill is to ensure that SBA develops processes and procedures to consider size as a factor during its WOSB certification process. However, the intent is not to require the SBA to perform a full, formal size determination as a condition to become certified. Nothing precludes the SBA from referring a potentially large WOSB applicant for a formal size determination, if it deems necessary, as it is a current process. The SBA should take every possible measure to ensure that considering an applicant's size does not slow the certification process.

This bill is based on the SBA OIG recommendation that the SBA develop procedures to verify size. The SBA OIG provided additional context in Report Number 22–20:

"Both of the approved third-party certifiers that we reviewed had documented certification procedures that required the application reviewers verify that the firm met applicable size standards under its primary NAICS code. In addition to requiring applicants to submit business size documentation, program officials should establish procedures similar to the third-party certifiers, HUBZone, and 8(a) programs to ensure analysts consistently verify that WOSB applicants are small businesses." [1]

"OIG acknowledges that a size determination is a specific process and is not recommending SBA perform size determinations for each applicant. OIG believes program officials can still certify that the business meets size standards, similar to the procedures used to certify that 8(a) applicants meet size requirements, to participate in the program. Without clear regulations and procedures to verify the applicant's business size, we believe the program is vulnerable to abuse." [2]

III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 7128. On May 11, 2023, the Com-

[1] U.S. SMALL BUS. ADMIN. INSPECTOR GEN., 22–20, SBA'S IMPLEMENTATION OF THE WOMEN-OWNED SMALL BUSINESS CERTIFICATION PROGRAM, 5 (Sep. 29, 2022).
[2] *Id*. at 14.

mittee held a hearing titled "Leveling the Playing Field: The State of Small Business Contracting." Witnesses at this hearing discussed challenges they face taking advantage of federal contracting opportunities like the WOSB program. This bill will help ensure that businesses participating in the WOSB program are actually small businesses.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on January 31, 2024, and ordered H.R. 7128 reported to the House of Representatives. During the markup no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 7128 to the House of Representatives at 12:08 p.m.

118th Congress, House Committee on Small Business
Vote Record

Date: Wednesday, Jan 31st, 2024

H.R.- 7128 Time of Vote: 12:08

Republicans	Aye	No	Present
Mr. Luetkemeyer (MO-03)	✓		
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)	✓		
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)	✓		
Mr. (La-Low-ta) Lalota (NY-01)	✓		
Ms. Maloy (UT-02)			
Chairman Williams (TX-25)	✓		
TOTALS:			

Mr. Chairman _____ Votes _____

Mr. Chairman _____ Off _____, Votes _____

Mr. Chairman on that vote 24 Ayes 0 Nays and 0 Present

118th Congress, House Committee on Small Business
Vote Record

Date: Wednesday, Jan 31st, 2024

H.R.- 7128 Time of Vote:

Democrats	Aye	No	Present
Mr. Golden (ME-02)	✓		
Mr. M-fume (MD-07)	✓		
Mr. Phillips (MN-03)			
Mr. Landsman (OH-01)	✓		
Mr. Mc-Gar-vey (KY-03)	✓		
Ms. Glue-sen-kamp Perez (WA-03)	✓		
Ms. (Skull- ton) Scholten (MI-03)	✓		
Mr. (Tan-a-dar) Thanedar (MI-13)	✓		
Ms. (Chew) Chu (CA-28)	✓		
Ms. Davids (KS-03)	✓		
Mr. Pappas (NH-01)			
Ranking Member Velazquez (NY-07)	✓		
TOTALS:			

VI. SECTION-BY-SECTION OF H.R. 7128

Section 1—Short title

This section cites the bill as "The WOSB Integrity Act of 2024".

Section 2—Women owned small business size standard compliance for restricted competition

This section amends the Small Business Act to ensure that WOSB firms do not exceed the relevant size standard.

This section also ensures that current WOSB firms are not removed from the program, or lose access to contracts, because the SBA is delayed in verifying size.

It further clarifies that the bill does not require the SBA to conduct a full, formal size determination for each applicant.

Finally, this section includes a technical amendment to an incorrect reference in statute, language to ensure that no additional funds are authorized to be appropriated to carry out the bill, as well as definitions for Administrator, small business concern, and small business concern owned and controlled by women.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 7128 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 7128 are incorporated into the descriptive portions of this report.

X. Performance Goals and Objectives

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 7128 do not require additional reporting metrics. The SBA already provides information related to WOSB certification, such as the number of firms certified in the WOSB program.

XI. Statement of Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 7128 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Statement of Constitutional Authority

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cl. 1 of the Constitution of the United States.

XVII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

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. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which

shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) 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;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed $7,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(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 or receiving any subcontract 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) that 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.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a "fair market price" shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(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)(A) 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 and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(G) subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such eq-

uity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) 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.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other 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 under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

(ii) a termination pursuant to section 7(j)(10)(F);

(iii) a graduation pursuant to section 7(j)(10)(G); and

(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

(ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(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. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of 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)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 46.

(15) For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be de-

nied the opportunity to submit and have considered its offer for any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 15(a), section 31, or section 36, solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(C) LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicitated or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a

description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C) The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

(1)(A) to provide—

(i) technical, managerial, and informational aids to small business concerns—

(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(II) by cooperating and advising with—

(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

(bb) other Federal and State agencies;

(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

(ii) through cooperation with a profit-making concern (referred to in this paragraph as a "cosponsor"), training, information, and education to small business concerns, except that the Administration shall—

(I) take such actions as it determines to be appropriate to ensure that—

(aa) the Administration receives appropriate recognition and publicity;

(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

(dd) utilization of any one cosponsor in a marketing area is minimized; and

(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

(bb) the terms and conditions of the cooperation shall be specified;

(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of section 8(b)(1)(A) of this Act. To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic service:

(i) such volunteers, while carrying out activities under section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work

injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee:

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to section 8(b)(1) of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall provide, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or Administrative proceedings arising directly out of the performance of activities pursuant to section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988, the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperative with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) if a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, United States Code (the Walsh-Healey Public Contracts Act), he shall notify the Administration in writing of such finding. The Administration

shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) in any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contacts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of

such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5, United States Code, to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of 1949) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38, United States Code), veterans, and members of a reserve component of the Armed Forces.

(c) [Reserved].

(d)(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially

and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(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 the simplified acquisition threshold;

(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, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) 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—

(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, Asian Pacific 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) The term "small business concern owned and controlled by women" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more women; 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 women; and

(ii) whose management and daily business operations are controlled by one or more women.

(E) The term "small business concern owned and controlled by veterans" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more eligible veterans; 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 veterans; and

(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(G) In this contract, the term "qualified HUBZone small business concern" has the meaning given that term in section 31(b).

(H) In this contract, the term "small business concern owned and controlled by service-disabled veterans" has the meaning given that term in section 3(q).

(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 infor-

mation 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, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provisions of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone 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 and for small business concerns owned and controlled by women, 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 contact: *Provided,* That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the impositon of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(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 subcontracting 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, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) 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, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically dis-

advantaged individuals, and small business concerns owned and controlled by women 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), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) acknowledge receipt of their subcontractors' reports;

(v) compare the performance of their subcontractors to subcontracting plans and goals; and

(vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(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;

(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, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;

(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate that procedures have been adopted to substantiate the credit the successful offeror or bidder will elect to receive under paragraph (16)(A);

(H) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D) of this paragraph, including—

(i) the establishment of source lists of small business concerns, small business concerns owned and controlled by

veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and

(ii) efforts to identify and award subcontracts to such small business concerns; and

(I) a representation that the offeror or bidder will—

(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).

(7) The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

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

(9) MATERIAL BREACH.—The failure of any contractor or subcontractor to comply in good faith with—

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

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

(C) assurances provided under paragraph (6)(E),

shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.

(10) 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.

(11) 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);

(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, small business

concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate 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

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the Mentor-Protege Program established under section 4902 of title 10, United States Code, shall be granted credit for such assistance in accordance with subsection (f) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term "covered contract" means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 30 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract—

(i) shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor; and

(ii) may enter or modify past performance information of the prime contractor in connection with the unjustified failure to make a full or timely payment to a subcontractor subject to this paragraph before or after close-out of the covered contract.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (F).

(E) COOPERATION.—

(i) IN GENERAL.—Once a contracting officer determines, with respect to the past performance of a prime contractor, that there was an unjustified failure by the prime contractor on a covered contract to make a full or timely payment to a subcontractor covered by subparagraph (B) or (C), the prime contractor is required to cooperate with the contracting officer, who shall consult with the Director of Small Business Programs or the Director of Small and Disadvantaged Business Utilization acting pursuant to section 15(k)(6) and other representatives of the Government, regarding correcting and mitigating the unjustified failure to make a full or timely payment to a subcontractor.

(ii) DURATION.—The duty of cooperation under this subparagraph for a prime contractor described in clause (i) continues until the subcontractor is made whole or the determination of the contracting officer determination is no longer effective, and regardless of performance or close-out status of the covered contract.

(F) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SMALL BUSINESS CONCERN SUBCONTRACTORS.—

(A) IN GENERAL.—For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with a Federal agency, the prime contractor may elect to receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the total dollar value of any sub-

contracts awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more Federal agencies, or to one contract with more than one Federal agency, the prime contractor may only receive credit for first tier subcontractors that are small business concerns.

(B) COLLECTION AND REVIEW OF DATA ON SUBCONTRACTING PLANS.—The head of each contracting agency shall ensure that the agency—

(i) collects and reports data on the extent to which prime contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(ii) periodically reviews data collected and reported pursuant to clause (i) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to allow a Federal agency to establish a goal for an number of subcontracts with a subcontractor at any tier for a prime contractor otherwise eligible to receive credit under this paragraph.

(17) PAST PERFORMANCE RATINGS FOR CERTAIN SMALL BUSINESS SUBCONTRACTORS.—Upon request by a small business concern that performed as a first tier subcontractor on a covered contract (as defined in paragraph (13)(A)), the prime contractor for such covered contract shall submit to such small business concern a record of past performance for such small business concern with respect to such covered contract. If a small business concern elects to use such record of past performance, a contracting officer shall consider such record of past performance when evaluating an offer for a prime contract made by such small business concern.

(e)(1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(ii) place an order, expected to exceed $25,000, under a basic agreement, basis ordering agreement, or similar arrangement,

shall publish a notice described in subsection (f);

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000; and

(C) an executive agency awarding a contract for property or services for a price exceeding $100,000, or placing an order re-

ferred to in clause (A)(ii) exceeding $100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g)(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of this Act;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), and (7) of section 3204(a) of title 10, United States Code.

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h)(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

(B) all other requirements applicable to the use of such procedures under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et sq.) or sections 3201 through 3205 of title 10, United States Code, as appropriate, have been satisfied.

(2) The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2)) or paragraphs (3) and (4) of section 3204(e) of title 10, United States Code, shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or paragraphs (3) and (4) of section 3204(e) of such title, as appropriate.

(i) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) For purposes of this section, the term "executive agency" has the meaning provided such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES.—

(1) IN GENERAL.—Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of $10,000.

(2) CONTENT OF NOTICE.—The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

(B) the due date for receipt of offers.

(l) MANAGEMENT ASSISTANCE FOR SMALL BUSINESSES AFFECTED BY MILITARY OPERATIONS.—

(1) IN GENERAL.—The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict.

(2) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this subsection, the term "period of military conflict" means—

(A) a period of war declared by the Congress;

(B) a period of national emergency declared by the Congress or by the President; or

(C) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code.

(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CONTRACTING OFFICER.—The term "contracting officer" has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term "small business concern owned and controlled by women" has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to [paragraph (3)] *paragraph (4)*;

(D) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(E) each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women*, including that each such concern does not exceed the applicable size standard established under section 3(a)*.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) ENFORCEMENT; PENALTIES.—

(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(E)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(E).

(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(E).

(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18, United States Code; and

(ii) sections 3729 through 3733 of title 31, United States Code.

(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(7) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) $7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) $4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(8) AUTHORITY FOR SOLE SOURCE CONTRACTS FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry that has received a waiver under paragraph (3) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) $7,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) $4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(n) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

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XVIII. MINORITY VIEWS

SBA's Women-Owned Small Business (WOSB) Program is designed to help level the playing field for women-owned small businesses and economically disadvantaged women-owned small businesses (EDWOSBs) in the federal marketplace. The federal government attempts to expand contracting opportunities for WOSBs in two main ways: (a) setting an overall goal of sending 5% of federal contracting dollars to women-owned firms and (b) using certain authorities to make it easier to contract with women-owned firms. These authorities allow contracting officers to set-aside a contract exclusively for WOSBs competition and allow contracting officers to sole source contracts to a WOSB firm, when certain conditions are met.

The federal government topline goal of 5% of federal spending for WOSBs has only been met twice and federal agencies routinely miss their individual WOSB goals.

To participate in the WOSB program, the firm must be: (a) a small business; (b) owned and controlled by one or more women who are U.S. citizens; (c) have women manage day-to-day operations and make long-term decisions; and (d) be certified by the SBA, or a national certifying entity approved by the SBA.

The IG has stated that SBA is required to verify that WOSB program applicants meet the program criteria, including that the firm meets the small business size requirements. The Inspector General further believes that SBA's implementation "is inconsistent with the statutory requirement for SBA to certify the business meets program requirements." [1]

The language and the intent of this legislation are to align the SBA's implementation of the WOSB program with the IG's recommendation that "program officials should establish procedures similar to the third-party certifiers, HUBZone, and 8(a) programs to ensure analysts consistently verify that WOSB applicants are small businesses."

The authors of this legislation deliberately and specifically included the rule of construction in subsection (c) to ensure that implementation is aligned with the IG's comments: "OIG acknowledges that a size determination is a specific process and is not recommending SBA perform size determinations for each applicant."

[1] "SBA Inspector General Audit Report: SBA'S Implementation of the Women-owned Small Business Certification Program." Report Number 22–20, September 29, 2022: https://www.sba.gov/sites/sbagov/files/2022-09/SBA%20OIG%20Report%2022-20.pdf.

The committee does not intend for SBA to conduct a size determination for WOSB program applicants.

Sincerely,

NYDIA M. VELÁZQUEZ,
Ranking Member.

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