Public Law 100-656
100th Congress

An Act

To amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

Nov. 15, 1988
[H.R. 1807]

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

Business Opportunity Development Reform Act of 1988.
Disadvantaged persons.
Contracts.
15 USC 631 note.

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SEC. 2. DEFINITIONS.

For the purposes of this Act—

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

(2) the term "Administrator" means the Administrator of the Small Business Administration, unless otherwise indicated;

(3) the term "disadvantaged owners" means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(4) the term "minority owned businesses" means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

(5) the term "Program" means the Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10));

(6) the term "Program Participant" means a small business concern participating in the Program; and

(7) the term "Program Participation Term" means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) prior to the date of enactment of this Act.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES. 15 USC 636 note.

(a) FINDINGS.—The Congress finds that—

(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

(9) the widespread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

(b) PURPOSES.—The purposes of this Act therefore are to—

(1) affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged

to compete on an equal basis in the mainstream of the American economy;

(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the Program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

(3) ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase products and services (including construction work); and

(5) ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

SEC. 201. PROGRAM ADMISSION.

(a) ELIGIBILITY OF PARTICIPANTS.—Section 7(j)(11) of the Small Business Act (15 U.S.C. 636(j)(11)) is amended by striking out "(11)" and inserting in lieu thereof "(11)(A)" and by adding the following new subparagraphs:

"(B) Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 8(a)(4), shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

"(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

"(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

Establishment.

"(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to such Associate Administrator. The Division shall establish field offices within such regional offices of the Administra-

tion as may be necessary to perform efficiently its functions and responsibilities.

"(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to—

"(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

"(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

"(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

"(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

"(v) make a request for the initiation of termination or graduation proceedings, as appropriate, with the Associate Administrator for Minority Small Business and Capital Ownership Development;

"(vi) decide protests from applicants that have been denied program admission;

"(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

"(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (H) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

"(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

"(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

"(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program participants providing the same or similar items or services.

"(H) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be

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relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

"(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

"(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

"(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.".

Employment and unemployment.

(b) OUTREACH.—Section 8(a)(10) of the Small Business Act (15 U.S.C. 637(a)(10)) is amended by adding at the end thereof the following: "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.".

SEC. 202. TIME LIMITATIONS.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

"(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

"(A) no more than four years may be spent in the developmental stage of Program Participation; and

"(B) no more than five years may be spent in the transitional stage of Program Participation.".

SEC. 203. GRANDFATHERING.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended by adding the following new subparagraph:

"(D)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

"(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

"(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

"(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.".

SEC. 204. BUSINESS DEVELOPMENT OBJECTIVES.

(a) PROGRAM PURPOSES.—(1) Section 2(c)(2)(B) of the Small Business Act (15 U.S.C. 631(c)(2)(B)) is amended to read as follows:

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

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

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

(2) Section 2(e)(2) (15 U.S.C. 631(e)(2)) of the Act is amended to read as follows:

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

"(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

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

"(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.".

(b) TECHNICAL AMENDMENT.—Section 2(c)(2)(A)(v) of the Act is amended by striking "sole source".

SEC. 205. BUSINESS PLANS.

(a) IN GENERAL.—Section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) is amended to read as follows:

"(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which sets forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).".

(b) CONTENTS OF PLAN.—Section 7(j)(10) of such Act is further amended—

(1) by striking subparagraph (C),

(2) by redesignating subparagraph (D) (as added by section 203 of this Act) as subparagraph (C), and

(3) by adding after subparagraph (C), as redesignated, the following new subparagraph:

"(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the "plan") as described in clause (ii) of this subparagraph for review by the business opportunity specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan

submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

"(ii) The plans submitted under this subparagraph shall include the following:

"(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

"(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede small business concerns from receiving contracts other than those awarded under section 8(a).

"(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

"(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

"(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

"(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I).

"(iv) Each Program Participant shall annually forecast its needs for contact awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

"(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I),

"(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

"(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

"(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.".

SEC. 206. ELIGIBILITY REVIEWS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is further amended by adding at the end thereof the following new subparagraph:

"(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended or terminated pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

"(ii) Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 8(a) to other than a small business concern.".

SEC. 207. ELIGIBILITY OF NATIVE HAWAIIANS.

(a) IN GENERAL.—Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding the following new paragraph:

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

"(A) is a not-for-profit organization chartered by the State of Hawaii,

"(B) is controlled by Native Hawaiians, and

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

(b) TECHNICAL AMENDMENT.—Section 2(e)(1)(C) of such Act (15 U.S.C. 631(e)(2)(C)) is amended by inserting "Native Hawaiian Organizations," after "Asian Pacific Americans,".

(c) CLARIFICATION OF DEFINITION OF "SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN".—Paragraph (4) of section 8(a) of such Act (15 U.S.C. 637(a)(4)) is amended to read as follows:

"(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 owned by—

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

"(II) an economically disadvantaged Indian 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 owned by—

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

"(II) an economically disadvantaged Indian 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).".

SEC. 208. TERMINATION AND GRADUATION STANDARDS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), is further amended by adding at the end thereof the following new subparagraphs:

"(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

"(i) voluntarily elects not to continue participation;

"(ii) participates in the Program for a period in excess of the time limits prescribed by paragraph (15);

"(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

"(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

"(F) For the purposes of sections 7(j) and 8(a), the terms 'terminated' or 'termination' shall mean the total denial

"(F) For the purposes of this Act, sections 7(j) and 8(a), the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 8(a) prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation in terms prescribed by paragraph (15). An action for termination shall be based upon good cause, including—

"(i) the failure by such concern to maintain its eligibility for Program participation;

"(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

"(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

"(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

"(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

"(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

Fraud. Law enforcement and crime.

"(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

"(H) For the purposes of sections 7(j) and 8(a) the term 'graduated' or 'graduation' means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).".

SEC. 209. ECONOMIC DISADVANTAGE

(a) ECONOMIC DISADVANTAGE.—Section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) is amended—

(1) by striking out "(6)" and inserting in lieu thereof "(6)(A)", and

(2) by adding at the end the following new subparagraphs:

"(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

Records.

"(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 (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)(H) 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 equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.".

(b) CERTIFICATION.—Section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) is further amended by adding the following new subparagraph:

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

TITLE III—BUSINESS DEVELOPMENT

SEC. 301. STAGES OF PROGRAM PARTICIPATION.

(a) IN GENERAL.—Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended by adding at the end thereof the following new paragraph:

"(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a development stage; and a transitional stage.

"(B) The developmental stage of program participation shall be designed to assist the concern to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

"(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.".

(b) DEVELOPMENTAL STAGE OF PROGRAM PARTICIPATION.—Such section is further amended by adding at the end thereof the following new paragraph:

"(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

"(A) Contract support pursuant to section 8(a).

"(B) Financial assistance pursuant to section 7(a)(20).

"(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled 'An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

Termination date.

"(D) A maximum of five exemptions from the requirements 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 an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

"(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

"(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of

persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

"(iii) the contract to which it pertains does not exceed $3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1992.

Termination date.

"(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such financial assistance may be made without regard to section 18(a), shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments. For purposes of this subparagraph the term 'training provider' shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act (29 U.S.C. 1501 et seq.). The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

Regulations.

"(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

"(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

"(iii) no more than $2,500 shall be made available for any one employee or potential employee;

"(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

"(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

"(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

"(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

Records.

"(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

Science and technology. Real property.

"(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

"(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

"(I) Transitional management business planning training and technical assistance.

"(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(c) TRANSITIONAL STAGE OF PROGRAM PARTICIPATION.—Such section is further amended by adding at the end the following new paragraph:

"(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

SEC. 302. LOANS.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end thereof the following new paragraph:

"(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

Banks and banking.

"(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

"(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

"(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

"(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

"(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

"(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

"(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

"(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

"(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

"(II) No direct financing may be made unless it is shown that a participation is unavailable.

"(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

"(i) that is subordinated by its terms to all other borrowings of the issuer;

"(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

"(iii) the term of which is not more than twenty-five years; and

"(iv) the principal on which amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.".

SEC. 303. CONTRACTUAL ASSISTANCE.

15 USC 636.

(a) COMPETITIVE BUSINESS MIX.—Section 7(j)(10) of the Small Business Act (15 U.S.C. 363(j)(10)), is further amended by adding at the end thereof the following new subparagraph:

Marketing.

"(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as 'business activity targets.'). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a

reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

"(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii). Regulations.

"(iii) The regulations referred to in clause (ii) shall:

"(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

"(II) require a Program Participant to attain its business activity targets;

"(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

"(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

"(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).".

(b) COMPETITIVE THRESHOLDS.—Section 8(a)(1) of the Act (15 U.S.C. 637(a)(1)) is amended by adding at the end thereof the following new subparagraph:

"(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 $5,000,000 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.".

(c) CONTRACT MATCHING.—Section 8(a) of the Act (15 U.S.C. 637(a)), is further amended by adding at the end thereof the following new paragraph:

"(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.".

(d) CONTRACT SELECTION APPEALS AND DOCUMENTATION.—Section 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)(1)(A)) is amended by inserting after the sentence ending "the Administrator." the following: "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.".

(e) FAIR MARKET PRICE.—Section 8(a)(3) of the Act (15 U.S.C. 637(a)(3)) is amended to read as follows:

"(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).".

(f) OPTIONS.—(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval. 15 USC 637 note.

(2) Within sixty days after the date of enactment of this Act, the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection. Federal Register, publication.

(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a)).

(g) STANDARD INDUSTRIAL CLASSIFICATION CODE LIMITATIONS.—Section 8(a)(7) of the Act (15 U.S.C. 637(a)(7)) is amended by—

(1) inserting "(A)" after "(7)"; and

(2) adding the following new subparagraph:

"(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.".

(h) NON-MANUFACTURER RULE.—Section 8(a) of the Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

"(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15 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 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

"(iii) represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market."

SEC. 304. SUBCONTRACTING ASSISTANCE.

(a) ENCOURAGING COMPLIANCE.—Section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)) is amended by adding at the end thereof the following new subparagraph:

"(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.".

(b) LIQUIDATED DAMAGES CLAUSE.—The contract clause required by section 8(d)(4)(F) of the Small Business Act (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b). 15 USC 637 note.

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

SEC. 401. STATUS OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.

(a) IN GENERAL.—In Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended by inserting immediately after "Associate Administrator for Minority Small Business and Capital Ownership Development" the following: "who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee".

(b) CAREER POSITION.—The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Act shall be a career reserved position. 15 USC 633 note.

SEC. 402. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

"(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 certified 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.

Law enforcement and crime.

"(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)."

SEC. 403. POLITICALLY MOTIVATED ACTIVITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end the following:

"(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, imposed by the Administrator, 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.".

SEC. 404. REPORTS BY PROGRAM PARTICIPANTS.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

"(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).".

SEC. 405. FALSE REPRESENTATIONS.

(a) PENALTY FOR MISREPRESENTATION.—Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended to read as follows:

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

"(A) prime contract to be awarded pursuant to section 9 or 15;

"(B) subcontract to be awarded pursuant to section 8(a);

"(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

"(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

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

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

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

"(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

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

(b) MISREPRESENTATION OF SECTION 7 COMPLIANCE.—Section 16 of the Small Business Act (15 U.S.C. 645) is amended by adding at the end thereof the following new subsection:

"(f) Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).".

SEC. 406. CONGRESSIONALLY REQUESTED INVESTIGATIONS.

(e) INSPECTOR GENERAL INVESTIGATIONS.—Section 10(e) of the Small Business Act (15 U.S.C. 639(e)) is amended by—

(1) inserting "and the Inspector General of the Administration" immediately after "Administration", and

(2) adding the following new paragraph:

"(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 7(j) or 8(a). Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing of the disposition of the matter by such office.".

SEC. 407. CONTRACT PERFORMANCE.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

"(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, as a matter of discretion and on a nondelegable basis, waive the requirements of subparagraph (A) if requested to do so prior to the actual relinquishment of ownership or control. In addition to the requirement of the preceding sentence, a waiver may be given only if any 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

Securities.

"(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) 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.

"(D) 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.".

SEC. 408. DATA COLLECTION.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

"(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

"(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following: Reports.

"(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at $50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

"(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

"(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

"(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and

gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

"(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

"(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

"(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

"(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.".

SEC. 409. DUE PROCESS RIGHTS.

Paragraph (9) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(9)) is amended to read as follows:

"(9)(A) Subject to the provisions of subparagraph (E), the Administrator, 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)(H); and

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

"(C) The Administrator'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.".

SEC. 410. EMPLOYEE TRAINING AND EVALUATION. 15 USC 636 note.

(a) TRAINING REQUIREMENTS FOR BUSINESS SPECIALISTS.—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business Act, as amended by this Act.

(b) PILOT PROGRAM.—(1) Within 180 days after the effective date of this subsection the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 per centum of the total number of Program Participants as of the time of designation.

(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administrator, to attract and retain highly qualified personnel.

(c) REPORT AND PILOT PROGRAM TERMINATION.—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of

Representatives on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

(2) The pilot program conducted pursuant to subsection (a) shall be terminated three years after the date on which the Committees on Small Business of the Senate and of the House of Representatives receive written notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

SEC. 501. PLANNING SECTION 8(a) CONTRACT ACTIVITY.

Section 8(a)(12) of the Small Business Act (15 U.S.C. 637(a)(12)) is amended to read as follows:

"(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 (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.".

SEC. 502. ANNUAL CONTRACTING GOALS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended—

(1) by striking out "The head" and inserting in lieu thereof "(2) The head";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and

(3) by adding at the beginning the following new paragraph:

"(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The Government-wide goal for participation by small business concerns shall be established at not less than 20 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency. The Administration and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.". President of U.S.

SEC. 503. PRESIDENTIAL REPORT ON CONTRACTING GOALS.

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended—

(1) by striking out "(h)" and inserting in lieu thereof "(h)(1)",

(2) by striking out the last sentence of subsection (h)(1), and

(3) by adding at the end thereof the following new paragraph:

"(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President. The Administration's submission to the President shall include the following:

"(A) The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged and the performance in attaining such goals.

"(B) The goals in effect for each agency and the agency's performance in attaining such goals.

"(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

"(D) The number and dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

"(i) noncompetitive negotiation,

"(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

"(iii) competition restricted to small business concerns, and

"(iv) unrestricted competitions,

for each agency and on a Government-wide basis.

"(E) The number and dollar value of subcontracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

"(F) The number and dollar value of prime contracts and subcontracts awarded to women-owned small business enterprises.

"(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).".

15 USC 636 note.

SEC. 504. GENERAL ACCOUNTING OFFICE REPORT.

(a) IN GENERAL.—(1) The Comptroller General of the United States shall conduct a review of the operation of the Minority Small Business and Capital Ownership Development Program authorized by section 7(j)(10) (15 U.S.C. 636(j)(10)) and the contract assistance provided pursuant to section 8(a) (15 U.S.C. 637(a)) of the Small Business Act commencing within 180 days of the enactment of this Act and concluding on September 30, 1991.

(2) The review shall report on the implementation of the provisions of this Act by the Small Business Administration and the various executive departments and agencies providing contracting opportunities to the Program. In addition to such other matters as the Comptroller General may choose to include, the review shall report on the implementation of the Act's provisions relating to—

(A) the certification of Program Participants by the Administration;

(B) the development and maintenance of business development plans required by this Act;

(C) the amount and types of business management and technical assistance provided to Program Participants, including transition management assistance, and the criteria by which the effectiveness of such assistance is measured by the Administration;

(D) the type and amount of financial assistance provided through the programs authorized by the Small Business Act and the Small Business Investment Act of 1958;

(E) Program Participants' dependence on contracts awarded noncompetitively under the authority of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and the rate of increase in the percentage of competitively awarded contracts in the firms' business mix as Program Participants approach graduation;

(F) the competitive award of contracts within the Program, determining the number, dollar value, and source selection method used for the various contract opportunities required to be awarded competitively and those for which competition was discretionary;

(G) the noncompetitive award of contracts to Program Participants; the effect on the distribution of Program awards among individual Program Participants; and Program Participants located in each of the several States; and the Administration's use of the authority to direct contracts to Program Participants in the interest of maintaining equitable contract distributions;

(H) delay in the award of contracts flowing from protests, either of a prospective awardee's continued Program eligibility or the conduct of a competition restricted to Program Participants;

(I) limitations on the transfer of contracts to a Program Participant incident to transferring ownership and control of the business;

(J) reporting by Program Participants concerning the use of consultants and other non-employees to assist in obtaining Federal contracts; and

(K) data collection and data management by the Administration relating to the Program.

(3) The Comptroller General shall prepare a report summarizing the findings of the review described in paragraph (2), and make such recommendations for the improved implementation of this Act as may be appropriate. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives by February 1, 1992.

SEC. 505. COMMISSION ON MINORITY BUSINESS DEVELOPMENT. 15 USC 636 note.

(a) ESTABLISHMENT.—There is established a Commission to be known as the "Commission on Minority Business Development" (hereinafter in this title referred to as the "Commission").

(b) DUTIES.—(1) The Commission shall—

(A) review and conduct an assessment of the operations of all Federal programs intended to promote and foster the development of minority owned businesses to ascertain whether the purposes and objectives of such program are being realized. Such review and assessment shall include, among other things, an evaluation of the issues described in this subsection;

(B) review and assess the overall effectiveness of the Small Business and Capital Ownership Development Program established pursuant to 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) including—

(i) the procedure whereby the Administration certifies concerns pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)), including, the average time for the processing of applications, the criteria for program admission, and the geographic and industrial distribution of new program entrants;

(ii) the developmental assistance provided under the Small Business Act to such concerns and whether such assistance has been of benefit to program participants and whether modifications, additions, or deletions to such assistance should be provided to further the purposes of the program; such evaluation shall also include an analysis of whether program benefits, including contract awards, have been equitably distributed among all program participants and whether all regions of the Nation have benefitted from the program in proportion to their respective numbers of minority owned businesses;

(iii) the system established by this Act for competing contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and whether improved methods could be used, consistent with the purposes of the program, to better impart competitive skills, prevent program abuse, and promote the equitable distribution of awards;

(iv) the appropriate maximum term for program participation; such evaluation shall take into account relevant industry data, the developmental cycles of particular industries, and the financial, managerial and technological needs of such concerns to become competitive; a study shall be conducted relating to the fixed program term allowed under statute and the advisability of adopting alternative terms based on Standard Industrial Classification Codes or other economic indices;

(v) the data collection system maintained by the Administration to gather information relative to the program and whether such system is producing reliable data needed for effective management and control of the program;

(vi) various techniques that may be used to increase the participation rate of Federal agencies (as defined pursuant to section 224 of Public Law 95-507) in the program, to further the compliance of contractors with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), and to properly coordinate the program with the operations of other Federal programs and activities designed to assist small business concerns owned and controlled by the socially and economically disadvantaged; and

(vii) the laws and regulatory procedures designed to protect against program abuse and if additional safeguards are necessary to protect the integrity of the program;

(C) review and assess the programs described in subparagraph (B) and whether the congressional purposes for such programs are being achieved in a manner that is consistent with the intent of other programs established under Federal law to promote the development of small business concerns; and

(D) review and assess—

(i) the policies and procedures of major procurement agencies with respect to setting goals by contractors (and subcontractors) under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(ii) the performance of a sample of contractors (and subcontractors) in attaining the goals established in their

subcontracting plans and in making greater use of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iii) the extent to which liquidated damages have been assessed under subcontracting plans and whether the inclusion of a liquidated damage clause furthers the purposes of the subcontracting program; and

(iv) the special circumstances of contractors providing commercial products.

(2)(A) Based upon its review, the Commission shall issue an interim report and a final report to the Congress and to the President. Reports.

(B) The interim report shall be issued by December 31, 1990, and shall detail the methodology pursued to evaluate each issue described in subparagraphs (A) and (B) of paragraph (1). The Commission shall also indicate those changes in law or regulation, if any, that should be considered immediately in order to protect the integrity of the Program and further the legitimate interests of Program Participants.

(C) The final report shall be issued within 1 year after the interim report and shall contain detailed findings, conclusions, and recommendations for such changes in law or regulation as may be necessary to further the growth and development of minority businesses. Such findings, conclusions, and recommendations shall be stated for each issue described under each such subparagraph.

(c) MEMBERSHIP.—(1) The Commission shall be composed of fourteen members to be selected as follows:

(A)(i) The Administrator of the Small Business Administration, or a designee of the Administrator.

(ii) The Under Secretary of Defense for Acquisition.

(iii) The Secretary of Commerce (or such Secretary's Deputy).

(iv) The Secretary of Transportation (or such Secretary's Deputy).

(B) Two members shall be representatives of trade or business associations whose membership are primarily small business concerns owned and controlled by socially and economically disadvantaged individuals.

(C) Four members shall be chief executive officers, or individuals of similar position, from major domestic corporations two of which shall be minority businesses.

(D) Four members shall be from leading educational institutions in business administration and management, two of which shall be from historically Black colleges or universities and minority institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.).

(2) Appointments under subparagraphs (B), (C), and (D) of paragraph (1) shall be made by the President. No more than one-half of the members appointed under each such subparagraph shall be of the same political party. No appointed member shall be an officer or employee of the Federal Government nor of the Congress. President of U.S.

(3) Members appointed under such subparagraphs shall be appointed for the term of the Commission except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Commission for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(4) A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(5) Members of the Commission shall serve without pay for such membership, except members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Commission, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(6)(A) Four members of the Commission shall constitute a quorum for the receipt of testimony and other evidence.

(B) A majority of the Commission shall constitute a quorum for the approval of a report submitted pursuant to paragraph 2.

(C) The Commission shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

(7) The Chairperson and Vice Chairperson of the Commission shall be designated by the President and term of office for such Chairperson and Vice Chairperson shall be at the discretion of the President.

(d) DIRECTOR AND STAFF.—(1)(A) The Commission shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(B) The Director and staff of the Commission may be appointed without regard to section 531(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(3) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

(e) POWERS.—(1) The Commission may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Commission considers appropriate. The Commission may administer oaths or affirmations for the receipt of such testimony.

(2) Any member or person within the employ of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) Except as otherwise prohibited by law, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Commission, the head of such department or agency shall promptly furnish such information to the Commission.

(4) The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. Mail.

(5) The Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request. In addition, the Administrator shall, as appropriate, provide to the Commission, upon request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

(f) TERMINATION.—The Commission shall cease to exist on the date that it transmits its final report to the Congress and to the President.

(g) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until the Commission is terminated. New spending authority or authority to enter contracts as authorized in the section shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

(h) REPEALER.—Subparagraph (A) of section 7(j)(3) of the Small Business Act (15 U.S.C. 636(j)(3)(A)) is repealed.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act (15 U.S.C. 644(m)) is amended to read as follows:

"(m)(1) Each agency subject to the requirements of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note) shall, when implementing such requirements—

"(A) establish policies and procedure that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

"(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

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

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

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

"(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note).".

SEC. 602. INDIAN TRIBE EXEMPTIONS. 15 USC 637 note.

(a) COMPETITIVE THRESHOLDS.—Section 8(a)(16) of the Small Business Act as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to para-

graphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a) (4) and (13)).

(b) JOINT VENTURES.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a) (4) and (13)); and

(2) such Program Participant:

(A) owns 51 per centum or more of such joint venture;

(B) is located on the reservation of such tribe;

(C) performs most of its activities on such reservation; and

(D) employs members of such tribe for at least 50 per centum of its total workforce.

(c) LIMITATIONS.—A Program Participant, as a party to a joint venture shall receive no more than two contracts due solely to the provisions of subsection (b).

(d) ELIGIBILITY OF MORE THAN ONE CONCERN.—The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section 7(j)(10) and section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)) if—

(1) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(2) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(e) SUNSET.—Subsection (b) shall cease to be effective after September 30, 1991.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.

15 USC 644.

Section 15(k) of the Small Business Act is amended by—

(1) amending paragraph (3) to read as follows:

"(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee;";

(2) striking "and" at the end of paragraph (7);

(3) striking the period at the end of paragraph (8) and inserting in lieu thereof ", and"; and

(4) adding at the end thereof the following new paragraph:

"(9) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), or section 8(a) of this Act or section 1207 of Public Law 99-661. Such recommendations shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.".

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Small Business Competitiveness Demonstration Program Act of 1988.
15 USC 644 note.

PART A—SHORT TITLE AND FINDINGS

SEC. 701. SHORT TITLE.

This title may be cited as the "Small Business Competitiveness Demonstration Program Act of 1988".

SEC. 702. FINDINGS.

The Congress finds that—

(1) many small business concerns have repeatedly demonstrated their ability to fulfill a broad range of Government requirements for products, services (including research, development, technical, and professional services), and construction, through the Federal procurement process;

(2) various Congressional mandated reforms to the Federal procurement process, including the Competition in Contracting Act of 1984, the Defense Procurement Reform Act of 1984, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, were designed to eliminate obstacles to competition and thereby to broaden small business participation; and

(3) traditional agency efforts to implement the mandate for small business participation in a fair proportion of Federal procurements as required by section 15(a) of the Small Business Act have resulted in—

(A) a concentration of procurement contract awards in a limited number of industry categories, often dominated by small business concerns, through the use of set-asides, for the purpose of assuring the attainment of the agency's overall small business contracting goals; and

(B) inadequate efforts to expand small business participation in agency procurements of products or services which have historically demonstrated low rates of small business participation despite substantial potential for expanded small business participation.

PART B—DEMONSTRATION PROGRAM

15 USC 644 note.

SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—There is established a Small Business Competitiveness Demonstration Program (hereafter referred to as "the Program") pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) to provide for the testing of innovative procurement methods and procedures. The Administrator of Federal Procurement Policy shall designate the Administrator of the Small Business Administration as the executive agent responsible for conducting the test.

(b) PURPOSES.—The purposes of the Program are to demonstrate whether—

(1) the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities,

(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration, can expand small business participation in Federal contracting opportunities which have been historically low, despite adequate numbers of qualified small business contractors in the economy, and

(3) expanded use of full and open competition, as specified by the Competition in Contracting Act of 1984 (10 U.S.C. 2302(3) and 41 U.S.C. 403(7)), adversely affects small business participation in certain industry categories, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

(c) PROGRAM TERM.—The Program shall be conducted over a period of 4 years, beginning on January 1, 1989, and ending on December 31, 1992.

(d) APPLICATION.—The Program shall apply to contract solicitations for the procurement of services in industry groups designated in section 717.

SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

(a) ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.—Each participating agency shall establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups. In attaining its small business participation goal for contract awards for each of the designated industry groups, each participating agency shall make a good faith effort to assure that emerging small business concerns are awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups.

(b) SPECIAL ASSISTANCE FOR EMERGING SMALL BUSINESS CONCERNS.—

(1) SMALL BUSINESS RESERVE.—During the term of the Program, all contract opportunities in the industry groups designated in section 718 shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)), if the estimated award value of the contract is equal to or less than the greater of:

(A) $25,000, or

(B) such larger dollar amount established pursuant to paragraph (2).

(2) ADJUSTMENTS TO THE SMALL BUSINESS RESERVE.—If the goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry category is determined not to have been attained, upon the review of award data conducted in accordance with subsection (d)(1) of this section, the Administrator for Federal Procurement Policy, to ensure attainment of such goal, shall prescribe, on a semiannual basis, appropriate adjustments to the dollar threshold for contract opportunities in such designated industry category below which competition shall be conducted exclusively among emerging small business concerns.

(3) SMALL BUSINESS SMALL PURCHASE RESERVE.—The requirements of this subsection dealing with the reserve amount shall

apply notwithstanding the amount specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)).

(4) EXCLUSION OF MODIFICATIONS TO EXISTING CONTRACTS ABOVE THE SMALL PURCHASE THRESHOLD.—Any modification or follow-on award to a contract having an initial award value in excess of $25,000 shall not be subject to the limitations on competition required by this subsection.

(c) TARGETING INDUSTRY CATEGORIES WITH LIMITED SMALL BUSINESS PARTICIPATION.—(1) Concurrent with the term of the Small Business Competitiveness Demonstration Program, the head of each participating agency shall implement a program to expand small business participation in the agency's acquisition of selected products and services in 10 industry categories which have historically demonstrated low rates of small business participation. The products and services to be targeted for the small business participation expansion program and the special goals for such program, shall be developed in conjunction with the Administrator of the Small Business Administration, and shall be subject to the requirements of section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(2) The products or services selected for the small business participation expansion program shall be drawn from industry categories that:

(A) are the recipients of substantial purchases by the Federal Government;

(B) have less than 10 percent of such annual purchases made from small business concerns; and

(C) have significant amounts of small business productive capacity that have not been utilized by the Government.

(3) In developing its small business participation expansion program, each participating agency shall:

(A) prepare, and furnish to the Administration, a detailed, time-phased strategy (with incremental numerical goals); and

(B) encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

(d) MONITORING AGENCY PERFORMANCE.—

(1) Participating agencies shall monitor the attainment of their small business participation goals on a quarterly basis. The initial review by each participating agency shall be completed not later than June 30, 1989, based on the data for the period January 1 through March 31, 1989. Thereafter, each review shall be based on the aggregate of contract award data from the 4 quarters preceding the date of the review for which data is available.

(2) All awards to small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) shall be counted toward attainment of the goals specified in subsection (a) of this section.

(3) Modifications to a participating agency's solicitation practices, pursuant to section 713(b), shall be made at the beginning of the quarter following each review, if the rate of small business participation is less than 40 percent of the contract awards.

SEC. 713. PROCUREMENT PROCEDURES.

(a) FULL AND OPEN COMPETITION.—Except as provided in subsections (b) and (c), each contract opportunity with an anticipated value of $25,000 or more for the procurement of services from firms in the designated industry groups (unless set aside pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for Fiscal Year 1987) shall be solicited on an unrestricted basis during the term of the Program, if the participating agency has attained its small business participation goal pursuant to section 712(a). Any regulatory requirements which are inconsistent with this provision shall be waived.

(b) RESTRICTED COMPETITION.—If a participating agency has failed to attain its small business participation goal under section 712(a), subsequent contracting opportunities, which are in excess of the reserve thresholds specified pursuant to section 712(b) shall be solicited through a competition restricted to eligible small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) to the extent necessary for such agency to attain its goal. Such modifications in the participating agency's solicitation practices shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made pursuant to section 712(d) indicating that changes to solicitation practices are required. Such participating agency shall comply with the requirements of subsection (a) upon determining that its contract awards to small business concerns meet the required goals.

(c) RELATIONSHIP WITH THE COMPETITION IN CONTRACTING ACT OF 1984.—Subsections (a) and (b) shall not be construed to supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175).

SEC. 714. REPORTING.

(a) AWARDS OF $25,000 OR LESS.—During the term of the Small Business Competitiveness Demonstration Program, each award of $25,000 or less made by a participating agency for the procurement of a service in any of the designated industry categories shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of $25,000.

(b) SUBCONTRACTING ACTIVITY.—The Administrator for Federal Procurement Policy shall devise and implement, during the term of the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals for—

(1) services in each of the designated industry groups; and

(2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(c).

(c) SIZE OF SMALL BUSINESS CONCERNS.—During the term of the Program, each participating agency shall collect data pertaining to the size of the small business concern receiving any award for the procurement of—

(1) services in each of the designated industry groups; and

(2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(d).

SEC. 715. TEST PLAN AND POLICY DIRECTION.

(a) TEST PLAN.—The Administrator for Federal Procurement Policy may further specify the manner and conduct of the test activities required by this title through a test plan issued pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

(b) POLICY DIRECTION.—The Administrator for Federal Procurement Policy, in cooperation with the Administrator of the Small Business Administration, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent Government-wide implementation of this title in the Federal Acquisition Regulation, title 48 of the Code of Federal Regulations, issued pursuant to the Office of Federal Procurement Policy Act.

SEC. 716. REPORT TO CONGRESS.

(a) IN GENERAL.—Within 180 days after fiscal year 1991 data is available from the Federal Procurement Data Center, the Administrator for Federal Procurement Policy shall report the results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives, to the Committee on Governmental Affairs of the Senate, and to the Committee on Government Operations of the House of Representatives. The views of the Administrator of the Small Business Administration shall be included in the report.

(b) ANALYSIS OF PROGRAM.—The report shall include a section prepared by the Administrator of the Small Business Administration specifying the results of the intensive goaling and management program conducted to expand small business participation in agency acquisitions of selected products and services.

(c) RECOMMENDATIONS.—To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

SEC. 717. DESIGNATED INDUSTRY GROUPS.

(a) IN GENERAL.—For the purposes of participation in this Program, the designated industry groups are—

(1) construction (excluding dredging);

(2) refuse systems and related services;

(3) architectural and engineering services (including surveying and mapping); and

(4) non-nuclear ship repair.

(b) CONSTRUCTION.—Construction shall include contract awards assigned one of the standard industrial classification codes that comprise—

(1) Major Group 15 (Building Construction—General Contractors and Operative Builders),

(2) Major Group 16 (Construction Other Than Building Construction—General Contractors and Dredging), and

(3) Major Group 17 (Construction—Special Trade Contractors).

(c) REFUSE.—Refuse systems and related services shall include contract awards assigned to standard industrial classification code 4212 or 4953.

(d) ARCHITECTURAL AND ENGINEERING.—Architectural and engineering services (including surveying and mapping) shall include contract awards assigned to standard industrial classification code 7389 (if identified as pertaining to mapping services), 8711, 8712, or 8713.

(e) ALTERNATIVE DATA.—In the event that standard industrial classification codes are not assigned to individual contract awards reported to the Federal Procurement Data Center by January 1, 1989, the Program may be conducted on the basis of the product and service codes used to report data pertaining to such contract awards, related to the maximum practicable extent to the standard industrial classification code for the service being provided by the contractor.

SEC. 718. DEFINITIONS.

(a) DESIGNATED INDUSTRY GROUPS.—"Designated industry groups" means the groups specified in section 717 for participation in the Small Business Competitiveness Demonstration Program.

(b) EMERGING SMALL BUSINESS CONCERN.—"Emerging small business concern" means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(c) PARTICIPATING AGENCY.—"Participating agency" shall have the same meaning as the term "executive agency" in section (4)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)). The Administrator for Federal Procurement Policy is authorized to specify as part of the Program test plan the list of executive agencies designated to participate in the Program, which shall include:

(1) the Department of Agriculture,

(2) the Department of Defense (with the Department of the Army, the Department of the Navy, the Department of the Air Force, and the defense agencies reporting separately),

(3) the Department of Energy,

(4) the Department of Health and Human Services,

(5) the Department of Transportation,

(6) the Environmental Protection Agency,

(7) the General Services Administration (the Public Building Service reporting separately),

(8) the National Aeronautics and Space Administration, and

(9) the Veterans Administration.

The Administrator for Federal Procurement Policy is authorized to require any participating agencies to report separately in any manner deemed appropriate to enhance the attainment of the test activities authorized by this title.

(d) SMALL BUSINESS PARTICIPATION.—"Small business participation" shall include the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether such award was based on restricted or unrestricted competition, or was made on a sole source basis.

(e) STANDARD INDUSTRIAL CLASSIFICATION CODE.—"Standard industrial classification code" means a four digit code assigned to an industry category in the Standard Industrial Classification Manual

published by the Office of Management and Budget in effect on the date of enactment of this Act.

PART C—ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES 15 USC 644 note.

SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

(a) ESTABLISHMENT.—Subject to the requirements of subsection (b), of the total dollar amount of contracts for each standard industrial classification code for clothing and textiles awarded by the Defense Logistics Agency for each of the fiscal years 1989, 1990, and 1991:

(1) To the maximum extent practicable, 50 percent shall not be restricted by the size status of the competing business concerns.

(2) To the maximum extent practicable, 50 percent shall be made available for award pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) section 1207 of the National Defense Authorization Act for Fiscal Year 1987; and

(C) section 15(a) of the Small Business Act (15 U.S.C. 644(a)), if the criteria for such awards are met pursuant to part 19.5 (Set-Asides for Small Business) of title 48, Code of Federal Regulations, as in effect on September 1, 1988.

(b) COMPUTATION.—In order to calculate the percent limitation established pursuant to subsection (a), the Department may establish, after consultation with the Small Business Administration, major groupings of standard industrial classification codes that are closely related and apply such limitations to such groupings.

SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

(a) ESTABLISHMENT.—During fiscal years 1989, 1990, 1991, and 1992, the Secretary of the Army (hereafter in this section referred to as the "Secretary") shall conduct a program to expand the participation of small business concerns and emerging small business concerns in contracting opportunities for dredging.

(b) ENHANCED GOALS.—Of the total dollar value of contracts for dredging, the Department of the Army (hereafter in this section referred to as the "Department") shall make every reasonable effort to award to small business concerns:

(1) 20 percent during fiscal year 1989, including 5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(2) 25 percent during fiscal year 1990, including 7.5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(3) 30 percent during fiscal year 1991, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns; and

(4) 30 percent during fiscal year 1992, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns.

Subcontract awards may be counted towards the attainment of such goals, provided that there is available a system for the collection of data relating to the award of subcontracts under dredging contracts awarded by the Department.

(c) CONTRACT AWARD PROCEDURES.—(1) Except as provided in paragraphs (2) and (3), the Department shall solicit and award contracts for dredging through full and open competition in conformity with section 2304 of title 10, United States Code, section 15 of the Small Business Act (15 U.S.C. 644), and the implementing procurement regulations promulgated in conformity with section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405). Nothing herein shall impair the award of contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for Fiscal Year 1987.

(2) Contracting opportunities for dredging shall be reserved for competition among emerging small business concerns if their estimated award value is below an amount to be specified by the Administrator for Federal Procurement Policy (hereafter in this section referred to as the "Administrator"), upon the recommendation of the Secretary. Such reserve amount shall be established by the Administrator at the start of the program at a level which can reasonably be expected to result in the Department attaining the applicable participation goal for emerging small business concerns. Such reserve threshold shall be reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semiannual basis beginning after the end of the second quarter of fiscal year 1989 on the basis of the aggregate of contract awards for the four fiscal year quarters preceding the date of the review.

(3) The Secretary shall restrict for competition among all eligible small business concerns such additional contracting opportunities for dredging in such numbers and at such estimated award values as can reasonably be expected to result in the Department attaining the applicable participation goal for small business concerns generally.

(d) ACQUISITION STRATEGIES TO FOSTER SMALL BUSINESS PARTICIPATION.—(1) In attaining the goals for participation by small business concerns and emerging small business concerns, the Secretary is encouraged to:

(A) specify contract requirements and contractual terms and conditions that are conducive to competition by small business concerns and emerging small business concerns, consistent with the mission or program requirements of the Department;

(B) joint ventures, teaming agreements, and other similar arrangements, which permit small business concerns to effectively compete for contract opportunities for which an individual firm would lack the requisite capacity or capability needed to establish responsibility for the award of a contract; and

(C) subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or solicitation requirements specifying minimum percentages of subcontracting for the purpose of determining the responsiveness of an offer.

(2) During the term of the program, data shall be collected pertaining to the actual size of the firm receiving an award as a small business concern or an emerging small business concern.

(e) SIZE STANDARD.—For the purposes of the program established by subsection (a), the size standard pertaining to standard industrial classification code 1629 (Dredging and Surface Cleanup Activities) in effect on October 1, 1988 shall remain in effect until September 30, 1990.

(f) REPORTS.—

(1) The Secretary shall furnish a report to the Committees on Small Business of the Senate and House of Representatives, the Administrator of the Small Business Administration, and the Administrator for Federal Procurement Policy within 120 days after September 30, 1992.

(2) Interim reports shall be submitted annually within 90 days after the close of each of the fiscal years 1989, 1990, and 1991. The Secretary may include recommendations regarding adjustments to the Department's participation goals for small business concerns and emerging small business concerns and to the applicable size standard, if the Secretary determines that such goals cannot reasonably be attained from the pool of firms meeting the current size standard.

(3) The Secretary of Defense shall issue reports to the Congress on the operations of the program established pursuant to this section. Such reports shall detail the effects of the program on the mobilization base and on small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Interim reports shall be submitted every six months during the term of the program to the Committees on Armed Services and Small Business of the House of Representatives and the Senate.

PART D—AMENDMENTS TO THE SMALL BUSINESS ACT

SEC. 731. TECHNICAL AMENDMENT.

Section 809(a)(2) of title VIII, division A of Public Law 100-180 (101 Stat. 1130, December 4, 1987) is amended by striking out "October 1, 1988" and inserting in lieu thereof "October 1, 1989". 15 USC 644 note.

SEC. 732. REPEALER.

Paragraphs (2) through (5) of subsection 3(a) of the Small Business Act (15 U.S.C. 632(a) (2)-(5)) are repealed. Any numerical size standard that pertains to any of the designated industry groups, and that is in effect on September 30, 1988, shall remain in effect for the duration of the Program. 15 USC 632 note.

PART E—OTHER AMENDMENTS

SEC. 741. SEGMENTATION OF INDUSTRY CATEGORY.

15 USC 644 note.

Maritime affairs.

The Small Business Administration, pursuant to the authority of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), shall segment the industry category of shipbuilding and ship repair, as follows:

(1) nuclear shipbuilding and repair;

(2) non-nuclear shipbuilding; and

(3) non-nuclear ship repair, which shall be further segmented by, at least, East Coast and West Coast facilities.

SEC. 742. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Section 901 of the Federal Property and Administrative Services Act (40 U.S.C. 541) is amended by striking out paragraph (3) and inserting the following:

"(3) The term 'architectural and engineering services' means—

"(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

"(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

"(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.".

TITLE VIII—AUTHORIZATIONS, EFFECTIVE DATES, AND MISCELLANEOUS MATTERS

15 USC 636 note.

SEC. 801. REGULATIONS.

The Small Business Administration shall—

(1) within 60 days after the date of enactment of this Act conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act, as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act;

Federal Register, publication.

(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

(3) within two hundred and ten days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act.

SEC. 802. AUTHORIZATIONS.

(a) BUSINESS OPPORTUNITY SPECIALISTS.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $3,500,000 to provide for the employment, salaries and expenses of 70 additional Business Opportunity Specialists to carry out the duties described in sections 201 and 410 of this Act.

(b) TRAINING OF BUSINESS OPPORTUNITY SPECIALISTS.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $500,000 to conduct the training and obtain the qualifications for Business Opportunity Specialists described in section 410.

(c) TRADITIONAL PROCUREMENT CENTER REPRESENTATIVES.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $735,000 to employ 15 additional Procurement Center Representatives.

(d) BUSINESS LOANS.—There is hereby authorized to be appropriated to the Business Loan and Investment Fund, established under section 4(c)(1) of the Small Business Act (15 U.S.C. 633(a)(1)),

the sum of $10,000,000 each year for fiscal years 1989 and 1990 for both direct and guaranteed loans made pursuant to section 7(a)(20) of the Small Business Act, as added by section 302 of this Act.

(e) JOB TRAINING.—There is hereby authorized to be appropriated the sum of $2,000,000 for fiscal year 1990 for the job training program established by section 7(j)(13)(E) of the Small Business Act (15 U.S.C. 636(j)(13)(E)), as added by section 301(b) of this Act.

(f) LIMITATION.—(1) Any new credit authority or authority to enter into contracts provided for in this Act is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. 15 USC 636 note.

(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for the purpose of making grants of financial assistance under the so called "Business Development Expense" program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)).

SEC. 803 EFFECTIVE DATES. 15 USC 631 note.

(a) IN GENERAL.—Except as otherwise provided, the following provisions (and the amendments made by such provisions) shall take effect on the date of the enactment of this Act:

(1) Sections 1 and 2.
(2) Section 101.
(3) Sections 202, 203, 204, 206, and 207.
(4) Sections 301(a) and 303 (d), (e), and (f).
(5) Sections 405, 406, 408, and 410.
(6) Sections 504 and 505.
(7) Sections 601 and 603.
(8) Titles VII and VIII.
(9) Sections 7(j)(13)(G) and 7(j)(13)(I) of the Small Business Act (as added by section 301(b)).

(b) SPECIAL RULES.—(1) Except as otherwise provided, the following sections (and the amendments made by such sections) shall take effect on June 1, 1989:

(A) Sections 201, 205, and 208.
(B) Sections 301(b), 301(c), 303(a), 303(c), 303(g), 303(h), and 304.
(C) Sections 401, 402, 403, 404, and 409.
(D) Section 602.

(2) Section 407 shall take effect with respect to contracts entered into on or after June 1, 1989.

(3) The following sections (and the amendments made by such sections) shall take effect on October 1, 1989:

(A) Section 209.
(B) Sections 302 and 303(b).
(C) Sections 501, 502, and 503.
(D) Section 7(j)(13)(E) of the Small Business Act (as added by section 301(b) of this Act).

Approved November 15, 1988.

LEGISLATIVE HISTORY—H.R. 1807 (S. 1993):

HOUSE REPORTS: No. 100-460 (Comm. on Small Business) and No. 100-1070 (Comm. of Conference).
SENATE REPORTS: No. 100-394 accompanying S. 1993 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 133 (1987): Dec. 1, considered and passed House.
Vol. 134 (1988): July 7, H.R. 1807 considered and passed Senate, amended, in lieu of S. 1993.
Oct. 12, House agreed to conference report.
Oct. 18, Senate agreed to conference report.