Public Law 101-37
101st Congress

An Act

June 15, 1989
[S. 767]

To make technical corrections to the Business Opportunity Development Reform Act of 1988.

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

Business Opportunity Development Reform Act Technical Corrections Act.
15 USC 631 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Business Opportunity Development Reform Act Technical Corrections Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents of the Business Opportunity Development Reform Act of 1988 (hereinafter referred to as "the Act") is amended—

(1) in item 713, by striking "Procurements" and inserting "Procurement"; and

(2) in item 722, by striking "participating" and inserting "participation".

SEC. 3. DEFINITIONS.

15 USC 636 note.

Section 2 of the Act is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively;

(2) by inserting after paragraph (2) the following new paragraph:

"(3) the term 'Business Opportunity Specialist' means the Administration employee responsible for providing business development assistance to Program Participants pursuant to sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a));"; and

(3) in paragraph (6), as redesignated—

(A) by striking "Small Business" and inserting "Minority Small Business", and

(B) by inserting before the semicolon the following: ", unless otherwise indicated".

SEC. 4. PROGRAM ELIGIBILITY.

Section 7(j)(11) of the Small Business Act (15 U.S.C. 636(j)(11)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B)(i) Except as provided in clause (iii), 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.

"(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be

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permitted to assert such eligibility for only one small business concern.

"(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if— Indians.

"(I) 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

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

(2) in the first sentence of subparagraph (E), by striking "Office of the Associate Administrator for Minority Small Business" and inserting "Office of Minority Small Business";

(3) in the second sentence of subparagraph (E), by striking "such Associate Administrator" and inserting "the Associate Administrator for Minority Small Business and Capital Ownership Development";

(4) in subparagraph (F)(v), by striking "with the Associate Administrator" and inserting "to the Associate Administrator";

(5) in subparagraph (F), by striking clause (vi) and inserting:

"(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;";

(6) in subparagraph (F)(viii), by striking "subparagraph (H)" and inserting "subparagraph (I)";

(7) in subparagraph (G)(ii), by striking "participants" and inserting "Participants";

(8) by redesignating subparagraph (H) as subparagraph (I); and

(9) by inserting after subparagraph (G) the following:

"(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.".

SEC. 5. 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 by striking "which sets forth" and inserting "which set forth".

(b) CONTENTS OF PLAN.—Section 7(j)(10)(D) of the Small Business Act (15 U.S.C. 636(j)(10)(D)) is amended—

(1) in the first sentence of clause (i), by striking "business opportunity specialist" and inserting "Business Opportunity Specialist";

(2) in clause (ii)(II), by striking "small business concerns" and inserting "the small business concern";

(3) in clause (iii), by inserting before the end period the following: "relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a)";

(4) in clause (iv), by striking "contact awards" and inserting "contract awards"; and

(5) in clause (iv)(I), by inserting before the second comma the following: "relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a)".

SEC. 6. ELIGIBILITY REVIEWS AND ELIGIBILITY OF NATIVE HAWAIIANS.

(a) ELIGIBILITY REVIEW.—Section 7(j)(10)(J)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(J)(i)) is amended by striking "suspended or terminated" and inserting "suspended".

(b) ELIGIBILITY OF NATIVE HAWAIIANS.—Section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)) is amended by striking "organizations" and inserting "Organization".

15 USC 631.

(c) Section 207(b) of the Act is amended by striking "(15 U.S.C. 631(e)(2)(C))" and inserting "(15 U.S.C. 631(e)(1)(C))".

(d) DEFINITION OF "SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN".—Section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) is amended—

(1) in clause (i), by inserting "unconditionally" after "per centum"; and

(2) in clause (ii), by inserting "unconditionally" before "owned by".

SEC. 7. TERMINATION AND GRADUATION STANDARDS.

(a) IN GENERAL.—Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended—

(1) by striking subparagraph (E)(ii) and inserting:

"(ii) completes the period of Program participation as prescribed by paragraph (15);";

(2) by striking the first subparagraph (F); and

(3) in subparagraph (F), by striking the first sentence and inserting the following: "For purposes of this section and section 8(a), the term 'terminated' and the term 'termination' means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term.".

(b) ECONOMIC DISADVANTAGE.—Section 8(a)(6)(C)(iii) of the Small Business Act (15 U.S.C. 637(a)(6)(C)(iii)) is amended by striking out "section 7(j)(10)(H)" and inserting "section 7(j)(10)(G)".

SEC. 8. STAGES OF PROGRAM PARTICIPATION.

(a) IN GENERAL.—Section 7(j)(12) of the Small Business Act (15 U.S.C. 636(j)(12)) is amended—

(1) in subparagraph (A), by striking "development" and inserting "developmental"; and

(2) in subparagraph (B), by inserting "in its effort" after "to assist the concern".

(b) DEVELOPMENTAL STAGE.—Section 7(j)(13)(E) of the Small Business Act (15 U.S.C. 636(j)(13)(E)) is amended by striking the second sentence and inserting the following: "Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate.".

SEC. 9. LOANS.

Section 7(a)(20) of the Small Business Act (15 U.S.C. 636(a)(20)) is amended in subparagraph (C)(iv), by inserting "is" before "amortized".

SEC. 10. CONTRACTUAL ASSISTANCE.

(a) CITATION.—Section 303(a) of the Act is amended by striking "15 U.S.C. 363(j)(10)" and inserting "15 U.S.C. 636(j)(10)". 15 USC 636.

(b) COMPETITIVE BUSINESS MIX.—Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended by striking "(i) During the developmental stage" and inserting "(I)(i) During the developmental stage".

(c) COMPETITIVE THRESHOLDS.—Section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) is amended by striking "program participants" and inserting "Program Participants".

(d) OPTIONS.—Section 303(f)(2) of the Act is amended by inserting "active" before "contracts previously awarded". 15 USC 637 note.

(e) NON-MANUFACTURER RULE.—Section 8(a)(17)(B) of the Small Business Act (15 U.S.C. 637(a)(17)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and

(2) by inserting after clause (i) the following:

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

SEC. 11. STATUS OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.

(a) IN GENERAL.—Section 401(a) of the Act is amended by striking "In Section" and inserting "Section". 15 USC 633.

(b) CAREER POSITION.—Section 401(b) of the Act is amended by striking "of the Act" and inserting "of the Small Business Act". 15 USC 633 note.

SEC. 12. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.

Section 8(a)(18)(A) of the Small Business Act (15 U.S.C. 637(a)(18)(A)) is amended by striking "certified".

SEC. 13. POLITICALLY MOTIVATED ACTIVITIES.

Section 8(a)(19)(B) of the Small Business Act (15 U.S.C. 637(a)(19)(B)) is amended by striking ", imposed by the Administrator,".

SEC. 14. REPORTS BY PROGRAM PARTICIPANTS.

Section 8(a)(20)(A) of the Small Business Act (15 U.S.C. 637(a)(20)(A)) is amended by striking "business opportunity specialist" and inserting "Business Opportunity Specialist".

SEC. 15. CONGRESSIONALLY REQUESTED INVESTIGATIONS.

Section 10(e)(2) of the Small Business Act (15 U.S.C. 639(e)(2)) is amended by striking "of the disposition of the matter" and inserting ", of the disposition of the request".

SEC. 16. CONTRACT PERFORMANCE.

Section 8(a)(21) of the Small Business Act (15 U.S.C. 637(a)(21)) is amended—

(1) in subparagraph (B), by striking "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:" and inserting the following: "The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:"; and

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following:

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

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

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

SEC. 17. DUE PROCESS RIGHTS.

Section 8(a)(9) of the Small Business Act (15 U.S.C. 637(a)(9)) is amended—

(1) in subparagraph (A), by striking "Administrator" and inserting "Administration";

(2) in subparagraph (B)(iii), by striking "section 7(j)(10)(H)" and inserting "section 7(j)(10)(G)"; and

(3) in subparagraph (C), by striking "Administrator's" and inserting "Administration's".

SEC. 18. EMPLOYEE TRAINING AND EVALUATION.

15 USC 636 note.

Section 410 of the Act is amended—

(1) in subsection (a), by striking "Training Requirements for Business Specialists" and inserting "Training Requirements for Business Opportunity Specialists"; and

(2) in subsection (c)(2), by striking "subsection (a)" and inserting "subsection (b)".

SEC. 19. PRESIDENTIAL REPORT ON CONTRACTING GOALS.

Section 15(h)(2)(A) of the Small Business Act (15 U.S.C. 644(h)(2)(A)) is amended by inserting "individuals" after "economically disadvantaged".

SEC. 20. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

15 USC 636 note.

Section 505 of the Act is amended—

(1) in subsection (b)(1)(B)(ii), by striking "program participants" each place it appears and inserting "Program Participants";

(2) in subsection (b)(1)(C), by striking "subparagraph (B)" and inserting "subparagraph (A)";

(3) in subsection (b)(2)(C), by striking "each such subparagraph" and inserting "paragraph (1)";

(4) in subsection (c)(3), by striking "such subparagraphs" and inserting "subparagraphs (B), (C), and (D)";

(5) in subsection (c)(6)(B), by striking "paragraph 2" and inserting "subsection (b)(2)";

(6) in subsection (d)(1)(B), by striking "531(b)" and inserting "5311(b)";

(7) by adding at the end of subsection (d) the following:

"(C) To facilitate the expeditious initiation of the Commission's activities, the Administrator of the Small Business Administration shall designate an Executive Secretary and provide such additional interim staff and support services as the Administrator deems appropriate until the time of the Commission's organizational meeting and the designation of its Executive Director, or such longer time as may be agreed upon by the Administrator and the Chairperson of the Commission.";

(8) in subsection (f), by striking "cease to exist on" and inserting "cease to exist within 90 days after"; and

(9) in subsection (g), by striking "authorized in the section" and inserting "authorized in this section".

SEC. 21. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m)(1)(A) of the Small Business Act (15 U.S.C. 644(m)(1)(A)) is amended by striking "procedure" and inserting "procedures".

SEC. 22. INDIAN TRIBE EXEMPTIONS.

Section 602 of the Act is amended— 15 USC 637 note.

(1) in subsection (a), by striking "Section 8(a)(16) of the Small Business Act" and inserting "Section 8(a)(1)(D) of the Small Business Act,";

(2) in subsection (b)(2)(B), by inserting after "reservation" "or former reservation of such tribe as determined by the Secretary of the Interior";

(3) in subsection (b)(2)(C), by inserting ", or such former reservation" before the semicolon; and

(4) by striking subsection (d) and redesignating subsection (e) as subsection (d).

SEC. 23. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

Section 711(a) of the Act is amended by inserting "in this title" after "referred to". 15 USC 644 note.

SEC. 24. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

Section 712(b)(1) of the Act is amended by striking "section 718" and inserting "section 717". 15 USC 644 note.

SEC. 25. PROCUREMENT PROCEDURES AND REPORTING.

(a) PROCUREMENT PROCEDURES.—Section 713(a) of the Act is amended by striking "$25,000 or more" and inserting "more than $25,000". 15 USC 644 note.

(b) REPORTING.—Section 714(c)(2) of the Act is amended by striking "section 712(d)" and inserting "section 712(c)".

SEC. 26. DESIGNATED INDUSTRY GROUPS.

Section 717(b)(2) of the Act is amended to read as follows: 15 USC 644 note.

"(2) Major Group 16 (Heavy Construction Other Than Building Construction—Contractors) (excluding dredging);".

SEC. 27. DEFINITION OF PARTICIPATING AGENCY.

Section 718(c) of the Act is amended— 15 USC 644 note.

(1) by redesignating paragraphs (5) through (9) as paragraphs (6) through (10), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) the Department of the Interior,"; and

(2) in paragraph (8), as redesignated, by inserting "with" before "the Public Building Service".

SEC. 28. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

15 USC 644 note.

Section 721 of the Act is amended—

(1) by inserting "(10 U.S.C. 2301 note)" after "Fiscal Year 1987" in subsection (a)(2)(B); and

(2) by adding at the end thereof the following:

"(c) PROGRAM TERM.—The Program shall commence on January 1, 1989, and terminate on September 30, 1992.

"(d) REPORT.—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 6 months during the term of the program to the Committees on Armed Services and Small Business of the House of Representatives and the Senate.".

SEC. 29. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

15 USC 644 note.

Section 722 of the Act is amended—

(1) in subsection (a), by adding before the end period the following: "solicited on or after January 1, 1989";

(2) in subsection (d)(1)(B), by inserting "foster" before "joint ventures";

(3) in subsection (d)(1)(C), by inserting "foster" before "subcontracting through"; and

(4) in subsection (f), by inserting ", regarding compliance with this section" at the end of paragraph (1), and by striking paragraph (3).

SEC. 30. REGULATIONS.

15 USC 636 note.

Section 801(3) of the Act is amended by striking "two hundred and ten days" and inserting "270 days".

SEC. 31. AMENDMENTS TO EFFECTIVE DATES.

15 USC 631 note.

Section 803 of the Act is amended—

(1) in subsection (b)(3)(B), by striking "Sections 302 and" and inserting "Section";

(2) in subsection (b), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Section 302 shall take effect on June 1, 1989."; and

(3) in paragraph (1) of subsection (b), by striking "June 1, 1989" and inserting "August 15, 1989".

SEC. 32. EFFECTIVE DATES OF THIS ACT. 15 USC 631 note.

The amendments made by this Act shall apply as if included in the Business Opportunity Development Reform Act of 1988.

Approved June 15, 1989.

LEGISLATIVE HISTORY—S. 767 (H.R. 1764):

HOUSE REPORTS: No. 101-74 accompanying H.R. 1764 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 135 (1989):
Apr. 19, considered and passed Senate.
June 6, considered and passed House.