

MEMORANDUM FOR:

S. 272 was presented
to the President yesterday,
2 Aug. Too late to fix.
PS worked on this bill, so
you might check with him.

Date

OFFICE OF LEGISLATIVE LIAISON
Routing Slip

TO:

	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		X
5. Legislation		X
6.		
7.		
8.		
9.		
10.		

SUSPENSE

STAT

STAT

Action Officer:	<input type="checkbox"/>	<i>Can you handle this? You may want to talk to PCs/OL before proceeding.</i>
Remarks:	<input type="checkbox"/>	

TK 1AUG83
Name/Date

OK#
83-1739

ROUTING AND RECORD SHEET

SUBJECT: (Optional) Conference Report on S. 272/H.R. 1043

FROM: [Redacted]
Assistant General Counsel

EXTENSION NO. OGC 83-06411

DATE 29 July 1983

TO: (Officer designation, room number, and building)

DATE
RECEIVED FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Clair George, Director
Office of Legislative Liaison
7B02 Hqs.

✓

[Redacted] Pls have
[Redacted] find out
where that's at.
Probably too
late to fix.
Pls let us know.
If it's too late,
record the reasons
therefore for
the record

2. [Redacted] 2ay Gur

3. [Redacted]

4. [Redacted]

5. [Redacted]

6. [Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

10. [Redacted]

11. [Redacted]

12. [Redacted]

13. [Redacted]

14. [Redacted]

15. [Redacted]

[Redacted]
3 AUG 1983

OGC 83-06411

29 July 1983

OLL #
83-1739

MEMORANDUM FOR: Director, Office of Legislative Liaison

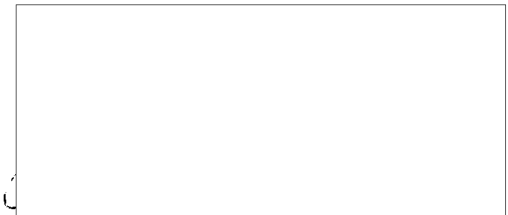
FROM:
Assistant General Counsel

SUBJECT: Conference Report on S. 272/H.R. 1043

REFERENCE: Memo from DC/LED/OGC, dated 29 June 1983, same subject (OGC 83-05454)

Reference memorandum from addressed continuing Congressional action regarding subject legislation. Paragraph 3 of the memorandum raises an issue of particular concern to the Agency. The legislation contains language which would provide that the determination regarding sole source procurements rests with the head of the procuring activity or his deputy on a non-delegable basis. On occasion we have asserted that the head of the procurement activity for this Agency is the Director of Logistics and not the Director of Central Intelligence. If the latter is the interpretation of the members of Congress, it provides an entirely unworkable system to which we should object. If the former is the intent, it will restrict current practice of the Agency, which is to delegate this authority to contracting officers or, at a minimum, division chiefs. It is our position that we should retain maximum flexibility and attempt to have the language liberalized or eliminated from the legislation. You may wish to seek the views of the Procurement Management Staff, Office of Logistics, on this matter, prior to any response to Congress.

Attachment:



Referent

6/30/83



STAT

OGC 83-05454
29 June 1983

STAT

MEMORANDUM FOR:
Logistics and Procurement Law Division, OGC

STAT

FROM:
Legislation Division, OGC

SUBJECT: Conference Report on S. 272/H.R. 1043

1. As per our conversation, attached is a copy of the "Conference Report on S. 272, Commerce Business Daily," the conference report on S. 272/H.R. 1043.

2. The most important thing to note is on page H 4433 in Section 2 of the "Joint Explanatory Statement of the Committee of Conference." As that Section indicates, the conferees rejected the Senate approach on the exemption for classified procurements to the general requirement of notice in the Commerce Business Daily and instead determined to retain existing law. As you know, the Agency is well served by existing law. Hence, this return to existing law is even better than the language we negotiated with the Senate and thus is a real gain.

3. You should also note Section 11 of the Statement. As that Section indicates, the conferees determined to adopt a prohibition against sole source contracts, notwithstanding any other provision of law, except those where the head of the procuring activity or his deputy, on a nondelegable basis, approves them. Nondelegability was not in either Bill and thus did not appear to be an issue going into conference. My own belief, however, is that the conferees included it in deference to the Senate, given that the Senate retreated on so many other issues.

4. The Senate passed the Conference Report on June 27, 1983. House action is expected this week.

STAT



Legislation Division
Office of General Counsel

Attachment

June 23, 1983

CONGRESSIONAL RECORD — HOUSE

H 4431

time when our contemporary Explorer has just left our solar system for worlds beyond. It is appropriate that we plan to celebrate the victory of a man who refused to believe that the world was flat at a time when the *Challenger* shuttle circles our globe far above the oceans which Columbus sailed.

The accomplishments of today are the result of the same courage, the same creativity and the same conviction exemplified by Christopher Columbus.

The Quincentenary Jubilee does not just honor Christopher Columbus' discovery of America. It embodies our own respect and reverence for all who rise to meet the challenges—and so by doing—discover new worlds.

APPOINTMENT OF CONFEREES ON H.R. 3135, LEGISLATIVE BRANCH APPROPRIATIONS, 1984

Mr. OBEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3135) making appropriations for the legislative branch for the fiscal year ending September 30, 1984, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: Messrs. FAZIO, OBEY, MURTHA, TRAXLER, Mrs. BOGGS, and Messrs. HIGHTOWER, WHITTEN, LEWIS of California, CONTE, MYERS, and PORTER.

There was no objection.

CONFERENCE REPORT ON S. 273, EXTENSION OF 8(A) PILOT PROGRAMS

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 273) to amend section 8(a)(1) of the Small Business Act:

CONFERENCE REPORT (H. REPT. No. 98-262)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

Sec. 1. (a) Clause (B) of the first sentence of section 8(a)(1) of the Small Business Act is amended by striking out “, as shall be designated by the president within 60 days after the effective date of this paragraph,” and inserting in lieu thereof “(other than the Department of Defense or any compo-

nent thereof) as shall be designated by the President.”; and

(b) The designation of an agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

Sec. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: “No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985.”

Sec. 3. The last sentence of section 8(a)(2) is amended to read as follows: “The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985.”

Amend the title so as to read: “An Act to amend section 8(a) of the Small Business Act.”

And the House agree to the same.

PARREN J. MITCHELL.

NEAL SMITH.

JOSEPH P. ADDABBO.

RON WYDEN.

DENNIS E. ECKART.

TOM LUKEN.

JOSEPH M. MCDADE.

SILVIO O. CONTE.

WM. BROOMFIELD.

LYLE WILLIAMS.

Managers on the Part of the House.

LOWELL P. WEICKER, Jr.

RUDY BOSCHWITZ.

LARRY PRESSLER.

SAM NUNN.

CARL LEVIN.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principle differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. 8(A) PROCUREMENT PILOT

P.L. 95-507 authorized an 8(a) pilot program which expired September 30, 1980. Under the provisions of the pilot, the President was authorized to select one agency over whom SBA would be given the authority to take procurement contracts for inclusion in SBA's 8(a) program for the development of minority enterprise. The President selected the Department of the Army.

The Senate bill would reopen the pilot program and require the President to select a new agency, other than the Defense Department or a component thereof, within sixty days. The pilot program would expire twenty months after enactment (sixty days for the President to act plus eighteen months for the pilot to operate).

The House amendment also would reopen this pilot program on October 1, 1983 for a period of two years, but would not restrict the authority of the President as to the

agency to be selected nor would it require the selection to be done within any particular time frame.

The conference substitute reopens this pilot program on October 1, 1983 and requires the President, within sixty days after enactment, to select a new agency, other than the Defense Department or a component thereof, to participate in the program. The pilot is effective through September 30, 1985.

2. SURETY BOND PILOT

P.L. 95-507 also authorized a surety bond pilot program which expired September 30, 1980. Under this pilot, SBA was authorized to waive surety bond requirements for 8(a) contractors which are start-up concerns and which have not been participating in the 8(a) program for more than one year. It took SBA more than two years to adopt final regulations. The Agency never granted any waivers.

The Senate bill does not reopen this pilot program.

The House amendment, effective on October 1, 1983, would reopen this pilot program through September 30, 1985.

The conference substitute also reopens this pilot program on October 1, 1983 through September 30, 1985.

The conferees recognize that by its terms the use of this authority will be limited under the eligibility requirements. Under the statute, before any bond requirement is waived, the Administration must determine, among other things, that the 8(a) small business concern is unable to obtain the requisite bond either from a surety company or by using the Administration's guarantee program. Furthermore, the Administration must determine that the contractor has the ability to perform the contract.

On the other hand, the conferees expect that the Administration will take the necessary steps to implement this pilot program and not take any action which would unnecessarily limit potential eligible participants by excluding from entrance into the regular 8(a) program firms which might be eligible for a bond waiver if admitted to the program.

PARREN J. MITCHELL,

NEAL SMITH,

JOSEPH P. ADDABBO,

RON WYDEN,

DENNIS E. ECKART,

TOM LUKEN,

JOSEPH M. MCDADE,

SILVIO O. CONTE,

WILLIAM S. BROOMFIELD,

LYLE WILLIAM.

Managers on the Part of the House.

LOWELL P. WEICKER, Jr.

RUDY BOSCHWITZ,

LARRY PRESSLER,

SAM NUNN,

CARL LEVIN.

Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 272, COMMERCE BUSINESS DAILY

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 272) to improve small business access to Federal procurement information:

CONFERENCE REPORT (H. REPT. No. 98-263)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, having met, after full and free conference, have agreed to rec-

H 4432

CONGRESSIONAL RECORD — HOUSE

June 23, 1983

commend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(a) Section 8(e) of the Small Business Act is amended to read as follows:

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication *Commerce Business Daily*, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph 2 were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) a statute provides that the procurement be made through another Federal department or from a specified source; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal from an educational institution that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the *Commerce Business Daily*, except if the solicitation is for procurement of requirements categorized as research or development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclose competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act, a Federal department may not commence negotiations for the award of a sole source contract for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

"(A) the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such sole source contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the *Commerce Business Daily*.

"(6) As used in this subsection—

"(A) the term 'sole source contract' means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

"(B) The term 'unsolicited proposal' means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interests to the department)."

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

And the House agree to the same.

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH P. ADDABBO,
RON WYDEN,
DENNIS E. ECKART,
TOM LUKEN,
JOSEPH M. McDADE,
SILVIO O. CONTE,
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Managers on the Part of the House.

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SAM NUWU,
CARL LEVIN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Under section 8(e) of the Small Business Act, the Secretary of Commerce is directed to obtain and publish notice of Federal procurements above stated dollar thresholds, with ten enumerated exemptions. The existing statute does not, however, provide for any time intervals between the date of publication of the notice and the awarding of the procurement contract. Both the Senate bill and the House amendment prohibit a Federal department from issuing a solicitation for at least fifteen days after the date of publication of a notice of the procurement in the *Commerce Business Daily* and further prohibit Federal agencies from foreclosing competition for the procurement for an additional thirty days after either the issuance of the solicitation or in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a notice of intent to place the order.

The conferees intend that this authority to publish notices of Federal procurements should continue to be vested in the Secretary of Commerce, or in any newly-created cabinet department that encompasses the trade functions of the Commerce Department. The conferees further expect that any other effort to transfer this authority from the department will be undertaken legislatively.

98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 98-263

COMMERCE BUSINESS DAILY

JUNE 23, 1983.—Ordered to be printed

Mr. MITCHELL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 272]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

“(a) Section 8(e) of the Small Business Act is amended to read as follows:

“(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as ‘department’) engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department’s need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph 2 were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government

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and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) a statute provides that the procurement be made through another Federal department or from a specified source; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal from an educational institution that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

“(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

“(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or development effort, in which case until at least thirty days have elapsed from the date of such publication;

“(B) foreclose competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

“(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

“(3) Whenever notice is required by paragraph (1), such notice shall include—

“(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

“(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

“(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

“(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act, a Federal department may not commence negotiations for the award of a sole source contract for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

“(A) the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract, and

“(B) the contracting officer for such sole source contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

“(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the Commerce Business Daily.

“(6) As used in this subsection—

“(A) the term ‘sole source contract’ means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

“(B) The term ‘unsolicited proposal’ means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the department).”.

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

And the House agree to the same.

PARREN J. MITCHELL,
NEAL SMITH,
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Managers on the Part of the House.

LOWELL P. WEICKER, JR.,
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CARL LEVIN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Under section 8(e) of the Small Business Act, the Secretary of Commerce is directed to obtain and publish notice of Federal procurements above stated dollar thresholds, with ten enumerated exemptions. The existing statute does not, however, provide for any time intervals between the date of publication of the notice and the awarding of the procurement contract. Both the Senate bill and the House amendment prohibit a Federal department from issuing a solicitation for at least fifteen days after the date of publication of a notice of the procurement in the *Commerce Business Daily* and further prohibit Federal agencies from foreclosing competition for the procurement for an additional thirty days after either the issuance of the solicitation or in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a notice of intent to place the order.

The conferees intend that this authority to publish notices of Federal procurements should continue to be vested in the Secretary of Commerce, or in any newly-created cabinet department that encompasses the trade functions of the Commerce Department. The conferees further expect that any other effort to transfer this authority from the department will be undertaken legislatively.

1. THRESHOLD AMOUNT

Under existing law the publication provisions apply to defense contracts of \$10,000 and above and civilian contracts of \$5,000 and above.

The Senate bill increases the threshold amount on civilian contracts to \$10,000.

The House amendment has no similar provision.

The conference substitute increases the threshold amount on civilian contracts to \$10,000.

2. EXEMPTION FOR CLASSIFIED REASONS

Under existing law there is an exemption from publication of procurements which for security reasons are of a classified nature.

The Senate bill re-worded the exemption to apply to procurements whose disclosure to more than one source would compromise national security.

The House amendment contains no similar provision.

The conference substitute retains the existing law language.

3. EXEMPTION FOR FOREIGN GOVERNMENTS

Under existing law there is an exemption from publication of procurements in which only foreign sources are to be solicited.

The Senate bill exempts from publication procurements in which a foreign government is reimbursing the United States for the cost of the procurement or if the terms of an international agreement or treaty require that the procurement be from specified sources.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements in which a foreign government is reimbursing the United States for the cost of the procurement and only one source is available, or if the terms of an international agreement or treaty authorize or require that the procurement be from specified sources.

4. EXEMPTION FOR CONTRACTS WITH OTHER AGENCIES

Under existing law there is an exemption from publication for those procurements which are made from another government department or agency, or a mandatory source of supply.

The Senate bill provides an exemption for procurements if a statute provides that it be made through another Federal department, establishment, or agency or from a specified source.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements for which a statute provides that they be made through another Federal department or from a specified source, or if the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982.

5. EXEMPTION FOR UTILITY SERVICES

Under existing law there is an exemption from publication of procurements which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are for utility services if only one source is available.

The conferees recognize that some utility services, such as telephone requirements, can, and should be, competed. However, in other instances, the conferees recognize that competition is impossible due to a monopoly on utility services in a given area, so that a requirement to advertise the procurement would be meaningless. Procurements in this category may include, but are not limited to, electrical services and water supply.

6. EXEMPTION FOR ORDERS UNDER EXISTING CONTRACTS

Under existing law there is an exemption from publication of procurements which are made by an order placed under an existing contract. There is also an exemption for procurements which involve perishable subsistence supplies.

The Senate bill eliminates both exemptions.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are made against an order placed under a requirements or similar contract, including orders for perishable subsistence supplies.

The conferees intend that this exemption be used in cases where an agency places an order against an existing contract or a requirements contract. Unless one of the other exemptions from publication applies to the initial, underlying contract, the conferees intend that this original contract only will be synopsized.

The conferees recognize that orders for perishable goods are often made against existing requirements contracts. Under this provision, all such orders for perishables would be exempted from the notice provisions in this law. However, the conferees do intend that whenever possible, and absent any other statutory exemptions, the contract itself, which is certainly not perishable, shall be subject to the notice provisions in this Act.

7. EXEMPTION FOR PERSONAL SERVICES

Under existing law there is an exemption from publication of procurements which are for personal or professional services.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute retains the Senate provision and eliminates the exemption from publication of procurements which are for personal or professional services.

8. EXEMPTION FOR EDUCATIONAL INSTITUTIONS

Under existing law there is an exemption from publication of procurements which are for services from educational institutions.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are for services from educational institutions if they result from an unsolicited proposal from those institutions that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed re-

search. For all such other unsolicited proposals, the conferees expect that the procuring department will use its utmost discretion to protect the originality and creativeness of the proposal when the agency is required to synopsise the procurement in the *Commerce Business Daily*.

9. NEGOTIATIONS FOR SOLE SOURCE CONTRACTS

The Senate bill provides that if notice of the procurement action for a sole source contract must be published, the agency cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract.

The House amendment contains no comparable provision.

The conference substitute provides that if notice of the procurement action for a sole source contract must be published, the department cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract, but that the department specifically is authorized to respond to requests for information during the thirty-day time period.

10. CONTENT OF NOTICE

The Senate bill specifies that the notice required to be published include a description of the subject matter of the contract, the name and address of the Federal employee who may be contacted to obtain a copy of the contract solicitation or other information, and a statement that any person may respond or submit a bid, proposal or quotation.

The House amendment contains no comparable provision.

The conference substitute requires that the notice contain a clear description of the subject matter of the contract; the name, address and telephone number of the Federal employee who may be contacted to obtain a copy of the solicitation or additional information, and, with respect to sole source contracts, a statement that interested persons are invited to identify their interest and capability or to submit timely proposals.

11. SOLE SOURCE CONTRACTS

The Senate bill prohibits a procuring activity from commencing negotiations for sole source contracts for more than \$100,000 unless the head of the procuring activity has approved the proposal to negotiate and the procuring activity has considered all responses to the procurement action, or unless the negotiation is for an 8(a) contract or an award pursuant to the Small Business Innovation Development Act of 1982.

The House amendment contains no similar provision.

The conference substitute imposes a prohibition against Federal departments commencing negotiations for sole source contracts (except under the 8(a) and Small Business Innovation Research programs) above a threshold amount unless the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract and the contracting officer

has considered the responses to the notice of procurement action. Federal departments specifically are authorized, however, to respond to request for information.

The conference report provides for a three-year phase in of the dollar threshold at which these provisions will apply. Under the terms of the conference agreement, in fiscal year 1984 the requirements will be imposed on procurement actions in excess of \$1 million; in fiscal year 1985 the level will be reduced to \$500,000; and in fiscal year 1986 and each year thereafter the level will be \$300,000. The conference will carefully monitor all agencies' compliance with the review of the authority to enter into sole source awards, and will consider a further reduction in the threshold level to \$100,000.

12. NOTICE OF SUBCONTRACTING OPPORTUNITIES

The Senate bill requires that in all procurement actions in excess of \$10,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

The House amendment contains no comparable provision.

The conference substitute requires that in all procurement actions in excess of \$25,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

13. TVA EXEMPTION

The Senate bill provides that this act shall apply to the Tennessee Valley Authority only to the extent it deems practicable, consistent with the purposes and conduct of its programs and the policies of the Small Business Act.

The House amendment contains no comparable provision.

The conference substitute provides that this Act shall apply to the TVA only with respect to procurements to be paid from appropriated funds.

While the conference report will apply the provisions of this Act, as appropriate, to the Tennessee Valley Authority only for those procurements derived from appropriated funds made available to TVA, conferees expect TVA to voluntarily comply with the provisions of this Act to the greatest extent possible for procurements to be paid from power program funds, as well. In a manner consistent with the policies of the Small Business Act and the TVA's responsibility for the operation of its power programs, the conferees further expect TVA to continue awarding a substantial portion of its procurement contracts to small business, regardless of the source of the procurement funds, and to take appropriate additional action, as necessary, to increase small business awareness of, and participation in, TVA's total procurement effort.

14. EFFECTIVE DATE

The Senate bill is effective as to procurement actions initiated forty-five days after the date of enactment.

The House amendment is effective upon enactment.

The conference substitute makes the Act applicable to procurement actions initiated ninety days after the date of enactment except as to the restrictions on sole source contracts which are effective October 1, 1983.

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH P. ADDABBO,
RON WYDEN,
D. E. ECKART,
TOM LUKEN,
JOSEPH M. MCDADE,
SILVIO O. CONTE,
WM. S. BROOMFIELD,
LYLE WILLIAMS,

Managers on the Part of the House.

LOWELL P. WEICKER, JR.,
RUDY BOSCHWITZ,
LARRY PRESSLER,
SAM NUNN,
CARL LEVIN,

Managers on the Part of the Senate.

○

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Ninety-eighth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Monday, the third day of January,
one thousand nine hundred and eighty-three*

Concurrent Resolution

Resolved by the Senate (the House of Representatives concurring),
That in the enrollment of the bill (S. 272) to improve small business access to Federal procurement information, and for other purposes, the Secretary of the Senate is hereby authorized and directed, in the enrollment of said bill, to make the following corrections, namely, strike the matter relating to subparagraph (D) of section 8(e)(1) of the Small Business Act in its entirety and insert in lieu thereof "(D) the procurement is made from another Government department or agency, or a mandatory source of supply;"; in the matter relating to section 8(e)(1)(G) of such Act strike out "from an educational institution"; in the matter relating to section 8(e)(4) of such Act after the phrase "or section 9 of this Act" insert "or unless the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with"; in the matter relating to section 8(e)(4) of such Act after the phrase "for the award of a sole source contract" insert "or a contract that results from an unsolicited proposal"; and in the matter relating to section 8(e)(4)(B) of such Act strike out "sole source"; and in the matter relating to section 8(e)(4) of such Act add at the end thereof the following: "Annually, each department shall report to the Congress on each negotiation above the stated amount if the head of the procuring activity or his deputy did not approve the authority to enter into such contract."

Attest:

Secretary of the Senate.

Attest:

Clerk of the House of Representatives.

H 6058

CONGRESSIONAL RECORD — HOUSE

August 1, 1983

and pass the bill (H.R. 3232), to amend title 28 of the United States Code to authorize payment of travel and transportation expenses of newly appointed special agents of the Department of Justice.

The Clerk read as follows:

H.R. 3232

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 31 of title 28 of the United States Code is amended by adding at the end the following new section:

"§ 530. Payment of travel and transportation expenses of newly appointed special agents

"The Attorney General or the Attorney General's designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section."

Sec. 2. The table of sections at the beginning of chapter 31 of title 28 of the United States Code is amended by adding at the end thereof the following new item:

"530. Payment of travel and transportation expenses of newly appointed special agents."

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. EDWARDS) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, the bill now under consideration, H.R. 3232 is very simple and very sensible. It would authorize the Department of Justice to pay for the travel and transportation expenses incurred by newly appointed special agents of that agency to their first permanent duty station.

The general rule for Federal employees is that these expenses are not reimbursable. However, several exceptions previously have been enacted, including one for the special agents of the Fish and Wildlife Service of the Department of the Interior. Like those employees, and unlike most other Federal employees, DEA and FBI special agents are both recruited nationally and assigned nationally. For example, although a prospective special agent may submit his or her application in the San Francisco field office, headquarters will assign the agent where the need is, and usually, in an area other than the area from which he or she was recruited.

In the past, the FBI has tried to alleviate the financial burden on the new agent by assigning that employee initially to the area from which he or she

was recruited, and then, 6 months later, reassigning that agent to a station where the need existed. That second move was reimbursable.

So long as the number of new agents remained relatively small, this system worked fairly well. However, the drug enforcement initiative now being pursued jointly at DEA and the FBI means that approximately 300 new agents will be hired in the next fiscal year. It no longer makes sense to assign these agents first to their home area—they must go directly to the area where they are needed. Therefore, the choice for the Department of Justice was either to continue their present practice (which will now be wasteful), burden these new agents with these expenses, or seek the authority which is contained in this bill.

The Subcommittee on Civil and Constitutional Rights, which I chair, held a hearing on this subject on June 16, 1983, and was convinced that the fair and economical thing to do was to enact this authority. Compared to the Department's present policy, this authority will permit a savings of over \$459,000 per year. The subcommittee unanimously reported this bill on June 29, and we now seek your support in the House.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, H.R. 3232 allows the FBI to reimburse special agents for the transfer of their families and household goods from Quantico, Va., their training facility, to their first permanent duty station, a practice not currently allowed by the Comptroller General of the United States. The FBI currently assigns these agents to the office closest to the location of their household goods and families at the time of appointment, for a period of 6 months, in order to establish the permanent duty station status required by the Comptroller General. This 6-month assignment is made without regard to the needs of the FBI and has proven to be counterproductive to their mission. It is agreed that the change would be more cost-effective than the current practice of the FBI and would streamline the process of assigning agents to various field offices based on the needs of the FBI. In fact, had H.R. 3232 been in place in fiscal year 1982, almost one-half a million dollars would have been saved.

The FBI argues that this is a matter of critical importance in view of the staffing requirements of the drug task forces. Experienced FBI agents are being assigned to those task forces, and office requirements in other areas will be satisfied through the assignment of new agents. These assignments would be effectively postponed for 6 months, during which time they

would be assigned to the office from which they were appointed.

I urge my colleagues to vote to suspend the rules and pass H.R. 3232.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS) that the House suspend the rules and pass the bill, H.R. 3232.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR ADOPTION OF CONFERENCE REPORT ON S. 272 AND FOR ADOPTION OF SENATE CONFERENCE RESOLUTION 58

Mr. MICHELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 293) providing that the House shall be considered to have adopted the conference report on the bill (S. 272) to improve small business access to Federal procurement information, to have receded from its amendment to the title of said bill, and to have adopted the concurrent resolution (S. Con. Res. 58) correcting the enrollment of S. 272.

The Clerk read as follows:

H. Res. 293

Resolved, That upon the adoption of this resolution the House shall be considered to have adopted the conference report on the bill (S. 272) to improve small business access to Federal procurement information, to have receded from its amendment to the title of said bill, and to have adopted the concurrent resolution (S. Con. Res. 58) correcting the enrollment of S. 272.

The SPEAKER pro tempore. Is a second demanded?

Mr. PRITCHARD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Maryland (Mr. MITCHELL) will be recognized for 20 minutes, and the gentleman from Washington (Mr. PRITCHARD) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland (Mr. MITCHELL).

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Mr. MITCHELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the resolution. Before explaining the substantive law involved, I want to clarify for the members the procedure which is involved.

The resolution simply does three things:

First, it provides that upon its adoption, the conference report on a bill to

August 1, 1983

CONGRESSIONAL RECORD — HOUSE

H 6059

improve small business access to Federal procurement information (S. 272) is approved.

Second, it directs the Secretary of the Senate when he enrolls this conference report to make several minor changes.

Third, it agrees to the Senate's title of the bill.

The reason that this conference report is being handled on the suspension calendar is to avoid any possible point or order for exceeding the scope of conference. The provision which is in question is the effective date of the bill. The original House bill, which subsequently became a House amendment to the Senate bill, would have been effective upon enactment. The Senate bill, S. 272, was a more extensive bill and among other things imposes restrictions upon the authority of a contracting officer to enter negotiations for a sole source contract. The Senate bill also changes some of the provisions regarding publication of notice of procurement in the Commerce Business Daily rather than simply imposing timely notice requirements. Presumably for these reasons the Senate felt a 45-day lead time was in order. Although the House conferees agreed with many of the provisions in the Senate bill, we felt that Federal departments should receive additional time to begin their compliance. As a result, the conferees delayed the effective date of the bill beyond the date specified in the Senate bill and thus may have exceeded the scope of conference. Consideration of the conference report on the suspension calendar avoids the possible raising of this technical violation.

In addition, after the conference report had been filed and after the Senate had approved the conference report, we received a letter from the Department of Defense expressing its concern over some of the provisions of the conference report. We had earlier considered some of the concerns expressed and addressed those which we believed had merit. The new letter, however, raised concerns for the first time. Although I do not necessarily agree with the Defense Department's views or the conclusions as to the impact of the conference report, nonetheless I agreed with my ranking minority member and the principal Senate conferees that it was advisable to adopt minor changes so as to preclude the possibility of erroneous interpretations and unintended results. As my colleagues know, conference reports cannot be amended on the floor as can a bill. The procedure needed to accomplish the changes is for the House and Senate to adopt a resolution for the Secretary of the Senate to make the changes. Such a change was introduced as Senate Concurrent Resolution 58 which basically includes the following:

Reinstatement of an exemption under existing law from publication of notice of procurements from another

Government department or a mandatory source of supply; establishing an exemption from such publication requirements of procurements for research resulting from unsolicited proposals if publication would disclose originality of thought; and establishment of an exemption in emergencies from the requirement that a contracting officer obtain approval from the head of the procuring activity before commencing negotiations for large sole source contracts.

The Senate agreed to this resolution last Thursday.

Thus, under the motion I have made all we are doing is agreeing to the conference report with minor changes.

The conference report, as modified by the Senate resolution, would do the following:

First, Federal departments and agencies would be required to public notice of upcoming Federal contracts of \$10,000 or more in the Commerce Business Daily. They would be required to allow the lapse of at least 15 days between the publication of notice and the issuance of a contract solicitation—30 days for R&D solicitations—and then to allow at least an additional 30 days for receipt of bids or proposals. There would be exemptions for those procurements: (1) which for security reasons are of a classified nature; (2) which are for goods or services for which the Department has an unusual and compelling urgency; (3) in which a foreign government is reimbursing the United States for the cost of the procurement and only one source is available or if the terms of an international agreement or treaty authorize or require that the procurement be from specified sources; (4) which are made from another Government department or a mandatory source of supply; (5) which are for utility services if only one source is available; (6) which are made against an order placed under a requirements contract; (7) which are for research resulting from unsolicited proposals which are unique if publication would disclose originality of thought or innovativeness; and (8) for which SBA and the Department agree that advance notice is not appropriate or reasonable.

Second, it would impose a prohibition against Federal departments commencing negotiations for a sole source contract (except under the 8(a) and Small Business Innovation Research programs and in emergency situations) above a threshold amount unless the head of the procuring activity or his deputy has approved the authority to enter into such contract and the contracting officer has considered the responses to the notice of procurement action. There would be a 3-year phase in of the dollar threshold amount of procurement contracts to which these provisions will apply: \$1 million in fiscal year 1984, \$500,000 in fiscal year 1985 and \$300,000 in fiscal year 1986 and each year thereafter.

Third, it also would require that in all procurement actions in excess of \$25,000 in which the award of subcontracts is likely, the Federal department entering the contract must submit for publication in the Commerce Business Daily a notice announcing the award of the prime contract.

Fourth and last, the provisions of the conference report would be applicable to procurement actions initiated 90 days after the date of enactment except the restriction on sole source contracts which would be effective October 1, 1983.

I believe this is an excellent bill and will assist small business in Government contracts. I also want to compliment all of the members of the committee who worked and contributed to the formation of this legislation. I particularly want to single out for congratulations Mr. ADAMO, Mr. McDONNELL, my ranking minority member, and my colleague from Nebraska, Mr. DAVIS.

Mr. RAY. Mr. Speaker, will the gentleman yield?

Mr. MITCHELL. Mr. Speaker, at this juncture I yield briefly to my colleague, the gentleman from Georgia.

(Mr. RAY asked and was given permission to revise and extend his remarks.)

Mr. RAY. Mr. Speaker, I rise in support of the conference report on S. 272 and urge its adoption by the House. However, I share some of the same concerns expressed by my colleague from Nebraska.

Let me commend my colleague and my chairman, Mr. MITCHELL, for pursuing legislation that will mandate a period of 15 days' notice in Commerce Business Daily before issuance of a solicitation, and 30 days before completion will be foreclosed. I supported the House bill, H.R. 1043, because I believe that small businesses need this extended period in order to compete effectively.

However, it recently came to my attention that in conference the exemption for perishable foods, such as fresh fruit, vegetables, meat, and seafood, has been deleted. This exemption is in present law and is important to preserve the ability of the Department of Defense as well as other agencies to buy perishable food in the marketplace. It is extremely difficult to forecast the need for these types of items 45 days in advance. Crop failures are difficult to predict. The food spoils rapidly and cannot be stored. The only way to insure that the best quality produce is purchased at the best price is to buy in the marketplace from whomever is offering the most favorable quality for the price.

There has been no indication that the present method of buying perishable food has resulted in a lack of competition, or an exclusion of small businesses. In fact, 97 percent of the Department of Defense purchases of sub-

H 6060

CONGRESSIONAL RECORD — HOUSE

August 1, 1983

sistence food are from small businesses.

Therefore, I hope that the Department of Defense as well as other agencies will take advantage of the provision in S. 272 to go to the SBA for an exemption when the reasonableness of current purchasing practices can be demonstrated.

Mr. Speaker, I urge that the House adopt the conference report on S. 272.

Mr. MITCHELL. Mr. Speaker, I reserve the balance of my time.

Mr. PRITCHARD. Mr. Speaker, I yield my 20 minutes to the gentleman from Nebraska (Mr. DAUB).

(Mr. DAUB asked and was given permission to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am delighted on behalf of the minority on the Small Business Committee to participate in support for this resolution and for the conference report.

I believe that this bill will bring much needed changes to our procurement system.

Recent articles in newspapers throughout our Nation have illustrated what happens when there is overreliance on a single source of supply.

With this bill, we intend to help bring an end to abusive overpricing, such as \$435 for a claw hammer, \$436 for a sledge hammer, \$437 for a 12-foot measuring tape, \$110 for a 4 cent electronic part, and \$44 for a 17-cent lamp. We cannot and we will not tolerate this kind of procurement abuse, even in a fiscally sound budget period; but with an almost \$200 billion yearly deficit, and cutbacks in all programs to reduce Government costs, this waste of taxpayer funds is outrageous.

Competition is our aim. We want agencies to know that there are other sources for the goods and services that they need, as opposed to single source contracting. By reducing sole source contracts, by increasing notice of prime and subcontracting opportunities and by ultimately increasing competition, Federal costs will be reduced and more businesses will have the opportunity to do business with the Federal Government.

I urge a vote in favor of this conference report.

Mr. Speaker, I would like to engage the chairman of the Small Business Committee, if I might, in a colloquy.

Mr. MITCHELL. I would be delighted.

Mr. DAUB. Will the gentleman from Maryland, the distinguished chairman of the committee, respond to some questions?

Mr. MITCHELL. I would be pleased to respond to my good friend.

Mr. DAUB. Mr. Speaker, I would like to engage the distinguished chairman of this committee in a colloquy concerning perishable commodities. Am I correct in understanding that under the conference report, if a department can demonstrate the reasonableness of

current purchasing practices and that advance notice is not appropriate or reasonable, it can receive an exemption from the advertisement requirements of this bill for the procurement of certain kinds of perishable commodities?

Mr. MITCHELL. Mr. Speaker, the gentleman from Nebraska is absolutely correct. The bill has been crafted to allow a nonlegislative resolution of special problems that may arise. The Administrator of the Small Business Administration and the head of the Federal Department are empowered to agree to commodity class exemptions where appropriate. Certainly, it is not the intent of this committee to cause a disruption of established procurement methods where ample competition and existing market methods combine to create an efficient procurement system that results in lower costs.

Mr. Speaker, let me add a little bit more to my colloquy. I would be most reluctant to preclude our Armed Forces from having access to those delicious Maryland crabs. That is a perishable commodity and certainly it would be cruel and almost inhuman to deny our armed services personnel access to that delectable morsel from Maryland.

Mr. DAUB. Might I say to my distinguished chairman and, indeed, good friend, that we would not want to deny the Armed Forces personnel at, for example, my Air Force base, the Strategic Air Command in Omaha, those delightful and delectable morsels, a commodity which may be deemed perishable, that comes from the Maryland shore.

I appreciate the gentleman's response very much and it is, indeed, a clear explanation. I think it serves as useful legislative intent in the record.

Mr. Speaker, let me conclude for my part, since I do not observe that any from my side wish any further part of the time granted to me, that the staff deserves a great deal of commendation for the work that they have done; that we indeed on both sides of the aisle and the committee have cooperated with the Department of Defense in attempting to work out any problems. I think that this close cooperation is notable.

I believe that we are together on a very good piece of legislation that will, indeed, be good for the efficiency of our Government and for the opportunities of those who on the outside of our Government institutions can have some say in efficiency and economy, which ought to be the hallmark of anything we do in this Congress.

So I do again urge my colleagues to support the resolution and the conference report.

Mr. Speaker, I yield back the balance of my time.

Mr. MITCHELL. Mr. Speaker, I have no further requests for time.

I simply urge the immediate approval of the conference report. I know of

no controversy surrounding this conference report.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. MITCHELL) that the House suspend the rules and agree to the resolution, House Resolution 293.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MITCHELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEAN AND COASTAL PROGRAM AUTHORIZATION ACT

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1098) to consolidate and authorize certain ocean and coastal programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce.

The Clerk read as follows:

S. 1098

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Oceanic and Atmospheric Administration Ocean and Coastal Program Authorization Act."

TITLE I—NONLIVING MARINE RESOURCES

AUTHORIZATION

Sec. 101. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its nonliving marine resource duties under law, \$800,000 for fiscal year 1984. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to nonliving marine resources specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947, as amended (33 U.S.C. 853a), and any other law involving such duties. Such duties include, but are not limited to, polymetallic sulfide analyses and research.

TITLE II—NATIONAL SEA GRANT COLLEGE PROGRAM

AUTHORIZATION

Sec. 201. (a) Section 212 of the National Sea Grant Program Act (33 U.S.C. 1131) is amended by inserting immediately after paragraph (3) the following new paragraph: "(4) Not to exceed \$42,000,000 for fiscal year 1984 and not to exceed \$45,000,000 for fiscal year 1985."

(b) Section 3(c) of the Sea Grant Program Improvement Act of 1976 (33 U.S.C. 1124a(c)) is amended by inserting immedi-

15 § 636b COMMERCE AND TRADE

§ 636b. Disaster loan interest rates

Any loan made under section 636a of this title and section 4452 of Title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a and 636d of this title and sections 3538 and 4452 of Title 42 shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

1. Computation by borrower. *Machella v. Cardenas, C.A. La. 1981, 653 F.2d 923, rehearing denied 659 F.2d 650.*
In respect to SBA disaster loans, interest is recomputed as of the date the specified statutory forgiveness is received

§ 637. Additional powers

Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates

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

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

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

(C) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and eco-

COMMERCE AND TRADE

Disaster loan interest rates

made under section 636a of this title and section 4452 of this title shall not exceed the current cost of repairing or replacing the property, loss, or damage in conformity with current codes and standards. Any loan made under sections 636a and 636d of this title shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the same maturity with remaining periods to maturity of ten to twelve months, but not to exceed 2 per centum per annum. In no event shall a loan made under this section bear interest at a rate in excess of 2 per centum per annum.

by borrower. *Machella v. Cardenas, C.A. La. 1981, 653 F.2d 923, rehearing denied 659 F.2d 650.*

Additional powers

contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility requirements; publication; recruitment; construction subcontracts; estimates shall be the duty of the Administration and it is hereby empowered whenever it determines such action is necessary or appropriate to enter into contracts with the United States Government and any officer, agency, or officer thereof having procurement powers to furnish articles, equipment, supplies, or materials to the Government or to perform construction work for the Government. In any case in which the Administration is competent and responsible to perform any government procurement contract to be let by any such officer shall be authorized in his discretion to let such contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or officer of the Administration;

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

to arrange for the performance of such procurement contracts and to let or otherwise letting subcontracts to socially and economically

66

COMMERCE AND TRADE

15 § 637

onomically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

No contract may be entered into under subparagraph (B) after September 30, 1981.

(2) Notwithstanding subsections (a) and (c) of section 270a of Title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

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

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

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

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

This paragraph shall not apply after September 30, 1981.

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

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

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

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

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

(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the

67

15 § 637

COMMERCE AND TRADE

small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

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

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

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

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

**Procurement and property disposal powers; determination
of small-business concerns**

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

[See main volume for text of (1)(A)]

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of subparagraph (A); and to facilitate the implementation of such volunteer programs the Administration may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

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

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in Title 28; and for the purposes of subchapter I of chapter 81 of Title 5 (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of Title 5.

COMMERCE AND TRADE

concern will be able to perform contracts which may be concerned under paragraph (1)(C) and has reasonable means in competing in the private sector.

actions made pursuant to paragraph (5) with respect to a firm which has been subjected to prejudice or bias shall be made available after consultation with the Associate Administrator for Small Business and Capital Ownership Development. All actions made pursuant to paragraphs (4), (5), (6), and (7) shall be made available after consultation with the Associate Administrator for Minority Small Business Ownership Development under the supervision of, and recommendation of, the Associate Administrator.

Within 60 days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth the conditions or circumstances pursuant to which a firm may be eligible for assistance under this subsection: *Provided*, That no such firm shall be eligible for participation in any program conducted under the authority of this subsection without first being afforded a hearing on the matter in accordance with chapter 5 of Title 5.

The Administration shall develop and implement an outreach program to identify and recruit small business concerns to apply for eligibility under this subsection.

To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded to the State where the work is to be performed.

To the maximum extent practicable the Associate Administrator for Small Business and Capital Ownership Development shall conduct a study, not more frequently than annually, a yearly estimate of the dollar value of contracts required for the efficient use of any program under the authority of this subsection, to each agency and shall report the results of such program.

and property disposal powers; determination of small-business concerns

It shall be the duty of the Administration and it is empowered, to take such action as is necessary—

[See main volume for text of (1)(A)]

to establish, conduct, and publicize, and to recruit, select, and employ (and to enter into contracts, grants, or agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Volunteers (ACV) for the purposes of subparagraph (A); and to facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the expenses of a staff of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any such program established pursuant to this subparagraph shall be effective only to the extent of such amounts as are provided in advance in appropriation.

Whenever any individual or group of persons participating in the performance of the purposes of subparagraphs (A) and (B) to the Administration's office facilities and related material and equipment the Administration deems appropriate, including clerical and technical services:

(1) Volunteers, while carrying out activities under this chapter shall be deemed Federal employees for the purposes of the general tort claims provisions in Title 28; and for the purposes of subchapter I of chapter 81 of Title 5 (relative to compensation) Federal employees for work injuries) shall be deemed Federal employees of the United States within the meaning of the term "employee" as defined in section 8101 of Title 5.

68

COMMERCE AND TRADE

15 § 637

and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee;

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

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

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

(E) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph to which volunteers have been made parties.

(F) In carrying out its functions under this paragraph, the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

[See main volume for text of (2) to (6)]

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

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of Title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

69

15 § 637

COMMERCE AND TRADE

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility.

[See main volume for text of (8) to (15); (c)]

Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

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

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

(A) does not exceed \$10,000;

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

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

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

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

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

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

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

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

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

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

(4) (A) Federal a of procur for the c other con panies of pursuant (B) B modificat (i of pu (i (i stru cont (i the appa thority a scribed l and mad (C) If agency c subcontract ineligible with oth agency l the contr (D) N ment au pursuant ty for s controlle ticipate (E) N in order concerns ly and (3) of t such Fe subcontract and econ paragrap method (5) (A amendm which— (of (thi (stru con shall co a contr plan wh (B) agency submit shall be

37

COMMERCE AND TRADE

(A) In any case in which a small business concern or group of concerns has been certified by the Administration pursuant to (B) to be a responsible or eligible Government contractor for a specific Government contract, the officers of the Government or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it meet any other requirement of responsibility or eligibility.

(See main volume for text of (8) to (15); (c))

of contracts by small business concerns; inclusion of required clauses; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

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

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

- (i) does not exceed \$10,000;
- (ii) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or
- (iii) is for services which are personal in nature.

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

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

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

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

- (i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (ii) whose management and daily business operations are controlled by one or more of such individuals.

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

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

70

COMMERCE AND TRADE

15 § 637

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

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

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

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

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

(iv) which offers subcontracting possibilities,

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

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

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

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

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

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

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

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

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of

71

15 § 637 COMMERCE AND TRADE

the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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COMMERCE AND TRADE

other such subcontracting plans shall be considered by agency in determining the responsibility of such bidder for contract. The subcontracting plan of the bidder awarded shall be included in and made a material part of the contract. Subcontracting plan required under paragraph (4) or (5)

percentage goals for the utilization as subcontractors of small concerns and small business concerns owned and controlled and economically disadvantaged individuals; name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual; description of the efforts the offeror or bidder will take to assist small business concerns and small business concerns controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for sub-

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

provisions that the offeror or bidder will submit such performance and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

specification of the types of records the successful offeror shall maintain to demonstrate procedures which have been developed to comply with the requirements and goals set forth in this subsection, including the establishment of source lists of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to award subcontracts to such small business concerns.

Provisions of paragraphs (4), (5), and (6) shall not apply to subcontracts for small business concerns.

Provisions of any contractor or subcontractor to comply in good

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

shall be required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract, and shall be a material breach of such contract or subcontract.

Provisions contained in this subsection shall be construed to supplement the provisions of Defense Manpower Policy Number 4A (32A) and any successor policy.

The award of contracts within the provisions of paragraphs (4), (5), and (6) of this subsection is authorized to—

(1) Federal agencies and businesses in complying with the provisions of paragraphs (4), (5), and (6) of this subsection, including the inclusion of subcontracting plans pursuant to paragraph (4) of this subsection;

(2) any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns and small business concerns controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract arising from any solicitation, and to submit its findings,

72

COMMERCE AND TRADE

15 § 637

which shall be advisory in nature, to the appropriate Federal agency; and

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

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

[See main volume for text of (e)]

As amended Pub.L. 95-89, Title V, § 501, Aug. 4, 1977, 91 Stat. 561; Pub.L. 95-507, Title II, §§ 202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub.L. 95-510, § 101, Oct. 24, 1978, 92 Stat. 1780; Pub.L. 96-302, Title I, § 118(b), July 2, 1980, 94 Stat. 840; Pub.L. 96-481, Title I, §§ 101, 105, Oct. 21, 1980, 94 Stat. 2321, 2322.

References in Text. The effective date of this paragraph, referred to in subsec. (a)(1)(B), (9), probably means the effective date of Pub.L. 95-507, which was effective Oct. 24, 1978.

Title IV of the Small Business Investment Act of 1958, referred to in subsec. (a)(2)(C), is classified to section 692 et seq. of this title.

The Federal tort claims provisions in Title 28, referred to in subsec. (b)(1)(C)(i), are classified to sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

1980 Amendments. Subsec. (a)(1). Pub.L. 96-481, § 101, substituted provisions that no contract may be entered into under subpar. (b) after Sept. 30, 1981, for provisions that such contracts may not be entered into after Sept. 30, 1980.

Subsec. (a)(2). Pub.L. 96-481, § 101, substituted provisions that the paragraph shall not apply after Sept. 30, 1981, for provisions that the paragraph shall not apply after Sept. 30, 1980.

Subsec. (a)(8). Pub.L. 96-481, § 105, substituted provisions that all determinations made pursuant to subsec. (a)(5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development and that all other determinations made pursuant to subsecs. (a)(4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to the Administrator, for provision that all determinations made pursuant to subsecs. (a)(4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (d)(3)(C). Pub.L. 96-302 included in the presumption of being disadvantaged individuals Asian Pacific Americans.

1978 Amendments. Subsec. (a)(1). Pub.L. 95-507, § 202(a), added provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated and made provision for the submission of stalemated matters for resolution.

Subsec. (a)(2). Pub.L. 95-507, § 202(a), authorized the Administration to

waive part or all of any bonding requirements for small business concerns as conditions for receiving any subcontract under this section and prescribed conditions for such waiver by the Administration. Subsecs. (a)(3) to (12). Pub.L. 95-507, § 202(a), added paras. (3) to (12).

Subsec. (b)(1). Pub.L. 95-510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpara. (C) to (F).

Subsec. (d). Pub.L. 95-507, § 211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of \$500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977 Amendment. Subsec. (b)(7). Pub.L. 95-89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted therein "with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract" for "with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract"; added subpar. (B); and incorporated existing and text in provisions designated subpar. (C), substituting therein "certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract" for "certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government con-

73

15 § 636d **AID TO SMALL BUSINESS** **Ch. 14A**

be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

(b) Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 4418 of Title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 636b of this title. Pub.L. 91-606, Title II, § 237, Dec. 31, 1970, 84 Stat. 1754.

Historical Note

References in Text. Section 4418 of Title 42, referred to in subsec. (b), was repealed by Pub.L. 93-288, Title VI, § 603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42 are now contained in section 5155 of Title 42.

Codification. Section was enacted as part of the Disaster Relief Act of 1970 and not as part of the Small Business Act, which comprises this chapter. Section was formerly classified to section

4456 of Title 42, The Public Health and Welfare.

Effective Date. Section effective Aug. 1, 1969, see, section 304 of Pub.L. 91-606, set out as a note under former section 4401 of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 91-606, see 1970 U.S.Code Cong. and Adm.News, p. 5486.

§ 637. Additional powers

Procurement contracts; subcontracts to small-business concerns

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

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

(2) to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such manage-

14A

AID TO SMALL BUSINESS

15 § 637

ment services as may be necessary to enable the Administration to perform such contracts.

Procurement and property disposal powers; determination of small-business concerns

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

(1)(A) to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, by disseminating such information, and by such other activities as are deemed appropriate by the Administration;

(B) in the case of any individual or group of persons cooperating with it in furtherance of the purposes of subparagraph (A), (i) to allow such an individual or group such use of the Administration's office facilities and related materials and services as the Administration deems appropriate; and (ii) to pay the transportation expenses and a per diem allowance in accordance with section 5703 of Title 5 to any such individual for travel and subsistence expenses incurred at the request of the Administration in connection with travel to a point more than fifty miles distant from the home of that individual in providing gratuitous services to small businessmen in furtherance of the purposes of subparagraph (A) or in connection with attendance at meetings sponsored by the Administration;

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

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

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

15 § 637

AID TO SMALL BUSINESS

Ch. 14A

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

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

(7) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract. In any case in which a small-business concern or group of such concerns has been certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and are authorized to let such Government contract to such concern or group of concerns without requiring it to meet any other requirement with respect to capacity and credit;

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

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

Ch. 14A

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Ch. 14A

AID TO SMALL BUSINESS

15 § 637

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

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

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

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of Title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) of this title to local public agencies (as defined in section 1460 of Title 42) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations; and

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

Studies and recommendations

(c) The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate

15 § 637

AID TO SMALL BUSINESS

Ch. 14A

Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.

Small business subcontracting program; regulations

(d)(1) Within ninety days after September 26, 1961, the Administrator, the Secretary of Defense, and the Administrator of General Services shall cooperatively develop a small business subcontracting program which shall contain such provisions as may be appropriate to

(A) enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, (B) insure that such prime contractors and subcontractors will consult through the appropriate procuring agency with the Administration when requested by the Administration, and (C) enable the Administration to obtain from any Government procurement agency such available or reasonably obtainable information and records concerning subcontracting by its prime contractors and their subcontractors as the Administration may deem necessary: *Provided*, That such program shall not authorize the Administration to

(i) prescribe the extent to which any contractor or subcontractor shall subcontract, (ii) specify the business concerns to which subcontracts shall be granted, or (iii) vest in the Administration authority respecting the administration of individual prime contracts or subcontracts: *Provided further*, That such program shall provide that in evaluating bids or selecting contractors for negotiated contracts, the extensive use of subcontractors by a proposed contractor shall be considered a favorable factor. The Secretary of Defense and the Administrator of General Services each shall promulgate regulations implementing the program as developed: *Provided*, That prior to the promulgation of such regulations, or any changes therein, the concurrence of the Administration shall be obtained, and if such concurrence cannot be obtained the matter in disagreement shall be submitted to the President who shall make the final determination. In addition, the Administrator of General Services and the Secretary of Defense may issue such other regulations concerning subcontracting not inconsistent with the small business subcontracting program as they each deem necessary or appropriate to effectuate their functions and responsibilities.

(2) Every contract for property or services (including but not limited to contracts for research and development, maintenance, repair and construction, but excluding contracts to be performed entirely outside of the United States or its territories) in excess of \$1,000,000 made by a Government department or agency, which in the opinion of the procuring agency offers substantial subcontracting possibilities shall require the contractor to conform to the small business subcontracting program promulgated under this subsection, and to insert in all subcontracts and purchase orders in excess of \$500,000 which offer substantial possibilities for further subcontracting a provision requir

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ing the subcontractor or supplier to conform to such small business
subcontracting program.

(3) The Administration shall include in any report filed under sec-
tion 639(b) of this title information, and such recommendations as it
may deem appropriate, with respect to the administration of the small
business subcontracting program established under this subsection.

(4) Nothing in this subsection shall be construed to authorize the
Administrator, the Secretary of Defense, or the Administrator of Gen-
eral Services to secure and disseminate technical data or processes de-
veloped by any business concern at its own expense.

Notice and publication of procurement actions; exceptions

(e) It shall be the duty of the Secretary of Commerce, and he is
empowered, to obtain notice of all proposed defense procurement ac-
tions of \$10,000 and above, and all civilian procurement actions of
\$5,000 and above, from any Federal department, establishment, or
agency engaged in procurement of supplies and services in the United
States; and to publicize such notices in the daily publication "United
States Department of Commerce Synopsis of the United States Gov-
ernment Proposed Procurements, Sales, and Contract Awards", imme-
diately after the necessity for the procurement is established; except
that nothing herein shall require publication of such notices with re-
spect to those procurements (1) which for security reasons are of a
classified nature, or (2) which involve perishable subsistence supplies,
or (3) which are for utility services and the procuring agency in ac-
cordance with applicable law has predetermined the utility concern to
whom the award will be made, or (4) which are of such unusual and
compelling emergency that the Government would be seriously injured
if bids or offers were permitted to be made more than 15 days after
the issuance of the invitation for bids or solicitation for proposals, or
(5) which are made by an order placed under an existing contract, or
(6) which are made from another Government department or agency,
or a mandatory source of supply, or (7) which are for personal or pro-
fessional services, or (8) which are for services from educational in-
stitutions, or (9) in which only foreign sources are to be solicited, or
(10) for which it is determined in writing by the procuring agency,
with the concurrence of the Administrator, that advance publicity is
not appropriate or reasonable.

Pub.L. 85-536, § 2[8], July 18, 1958, 72 Stat. 389; Pub.L. 87-305, §§
7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub.L. 88-560, Title III, §
305(c), Sept. 2, 1964, 78 Stat. 786; Pub.L. 89-754, Title X, § 1017,
Nov. 3, 1966, 80 Stat. 1295; Pub.L. 90-104, Title I, §§ 105-107, Oct.
11, 1967, 81 Stat. 268, 269; Pub.L. 91-375, § 6(g), Aug. 12, 1970, 84
Stat. 776.

Historical Note

References in Text. The Small Busi- in subsec. (b)(13), is classified principal-
ness Investment Act of 1958, referred to ly to chapter 14B [section 661 et seq.] of

15 § 637

AID TO SMALL BUSINESS

Ch. 14A

Note 1

this title. For complete classification, see Short Title note under section 661 of this title.

Codification. Prior similar provisions were contained in sections 207(b)(2), (b)(3), (b)(4), 208, 210, 212 and 216 of Act July 30, 1953, c. 282, Title II, 67 Stat. 235-239, as amended by Acts Aug. 9, 1955, c. 628, §§ 2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, c. 29, §§ 2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641 and 645 of this title. See Codification note under section 631 of this title.

1970 Amendment. Subsec. (b) (15). Pub.L. 91-375 substituted "section 3204 of Title 39" for "section 4154 of Title 39".

1967 Amendment. Subsec. (b) (1) (B). Pub.L. 90-104, § 105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b) (13). Pub.L. 90-104, § 106, substituted "advisory boards and committees" for "small business advisory boards and committees truly representative of small business", included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b) (15). Pub.L. 90-104, § 107, added par. (15).

1966 Amendment. Subsec. (b) (1). Pub. L. 89-754 designated existing provisions as subpar. (A) and added subpar. (B).

1964 Amendment. Subsec. (b). Pub.L. 88-560 added par. (14).

1961 Amendment. Subsecs. (d) and (e). Pub.L. 87-305 added subsecs. (d) and (e).

Effective Date of 1970 Amendment. Amendment by Pub.L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

Transfer of Functions. Transfer to Director of Action of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of the purposes of this section, such individuals or groups of persons, in providing technical and managerial aids to small concerns, remaining subject to direction of Small Business Administration, see section 2(a) (3) of 1971 Reorg. Plan No. 1, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 85-536 see 1958 U.S.Code Cong. and Adm.News, p. 3071. See, also, Pub.L. 87-305, 1961 U.S. Code Cong. and Adm.News, p. 2993; Pub. L. 88-560, 1964 U.S.Code Cong. and Adm. News, p. 3416; Pub.L. 89-754, 1966 U.S. Code Cong. and Adm.News, p. 3999; Pub. L. 90-104, 1967 U.S.Code Cong. and Adm. News, p. 1701; Pub.L. 91-375, 1970 U.S. Code Cong. and Adm.News, p. 3649.

Library References

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C.J.S. United States § 70.

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Procurement, technical and management programs, see 13 CFR 124.8-1 et seq.

Notes of Decisions

Award of contract 9
Capacity 7
Certification 8
Change in status 11
Civil remedies 15
Constitutionality 1
Contracts 10
Determination of Administrator 5
Discretion of Administrator 4
Due process 13
Evidence 18
Hearing 12
Injunction 17

Justiciable controversy 16
Power of Administrator 3
Purpose 2
Regulations, force and effect 6
Review 19
Standing to maintain action 14

1. Constitutionality

Where eligibility standard for program under this section under which the Small Business Administration was authorized