

110TH CONGRESS
1ST SESSION

H. R. 2532

To enhance the section 8(a) program of the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Ms. MOORE of Wisconsin (for herself and Mr. BARROW) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To enhance the section 8(a) program of the Small Business Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Minority-Owned Venture Empowerment Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PRE-8(a) PHASE

Sec. 101. Purpose.

Sec. 102. Technical assistance program.

TITLE II—MODIFICATIONS TO 8(a) PROGRAM

Sec. 201. Purpose.

Sec. 202. Administration of section 8(a) program.

TITLE III—POST-8(a) ASSISTANCE

Sec. 301. Purpose.

Sec. 302. Retention of status after completion of 8(a) program.

Sec. 303. Restricted competition for small businesses owned and controlled by socially and economically disadvantaged individuals.

1 **TITLE I—PRE-8(a) PHASE**

2 **SEC. 101. PURPOSE.**

3 The purpose of this title is as follows:

4 (1) To establish a developmental training initia-
5 tive to provide small business concerns with the
6 technical assistance necessary to navigate the Fed-
7 eral marketplace.

8 (2) To ensure that owners of small business
9 concerns are adequately prepared to perform con-
10 tracts upon entrance into the Federal marketplace.

11 **SEC. 102. TECHNICAL ASSISTANCE PROGRAM.**

12 (a) ESTABLISHMENT.—The Administrator of the
13 Small Business Administration shall establish a program
14 to be known as the “Pre-8(a) Program” (in this section
15 referred to as the “Program”) to provide technical assist-
16 ance to small business concerns with respect to the receipt
17 and performance of Federal procurement contracts.

18 (b) ELIGIBILITY.—

19 (1) OWNERSHIP AND NET WORTH.—To be eligi-
20 ble to participate in the Program under this section,
21 a small business concern shall—

1 (A) be owned and controlled by one or
2 more socially and economically disadvantaged
3 individual; and

4 (B) have a net worth that does not exceed
5 the maximum level specified pursuant to sub-
6 section (g).

7 (2) APPLICATION.—To participate in the Pro-
8 gram under this section, a small business concern
9 shall submit an application describing the ownership,
10 control, and social and economic disadvantage of the
11 small business concern.

12 (3) NONAPPLICABILITY OF OTHER FACTORS.—
13 In approving a small business concern for participa-
14 tion in the Program, the Administrator shall not
15 consider the following factors:

16 (A) The length of time for which the small
17 business concern has been in business in its pri-
18 mary industry classification.

19 (B) The prospects for success of the small
20 business concern in competing in the private
21 sector.

22 (C) The access to credit and capital of the
23 small business concern.

1 (D) The technical and managerial experi-
2 ence of the managers of the small business con-
3 cern.

4 (E) The operating history of the small
5 business concern.

6 (F) The demonstrated technical knowledge
7 of the small business concern.

8 (G) The record of performance on Federal
9 and private sector contracts of the small busi-
10 ness concern.

11 (H) The financial history of the small busi-
12 ness concern.

13 (I) Any outside employment of the owner
14 of the small business concern.

15 (c) NEEDS ASSESSMENT.—

16 (1) ASSESSMENT REQUIRED.—Not less than
17 once every two years, the Administrator shall con-
18 duct a needs assessment of each small business con-
19 cern participating in the Program under this section.
20 Such needs assessment shall include the following:

21 (A) An assessment of the training and
22 skills of the owner of the small business concern
23 (including business management training, mar-
24 keting, accounting, bookkeeping, and Federal
25 contracting).

1 (B) A determination of the likelihood that
2 the small business concern will receive Federal
3 prime contracts in its primary industry or in
4 associated industry areas through technical as-
5 sistance and development provided through the
6 Program.

7 (2) TERMINATION OF PARTICIPATION.—If the
8 Administrator determines, pursuant to a needs as-
9 sessment, that a participating small business con-
10 cern is not making progress toward financial sound-
11 ness and participation in Federal contracts, the Ad-
12 ministrator may terminate the participation of the
13 small business concern in the Program.

14 (d) NONELIGIBILITY FOR SOLE SOURCE OR COM-
15 PETITIVE CONTRACTS.—A small business concern partici-
16 pating in the Program shall not be eligible to be awarded
17 a Federal contract awarded using procedures other than
18 competitive procedures or a contract awarded using com-
19 petitive procedures under section 8(a) of the Small Busi-
20 ness Act (15 U.S.C. 637(a)).

21 (e) AGREEMENT FOR FACILITATION OF TRAINING.—
22 In order to facilitate the provision of technical assistance
23 under the Program, the Administrator shall enter into an
24 agreement with the Secretary of Defense regarding the
25 use of Procurement Technical Assistance Centers. The

1 Administrator may enter into such other agreements with
2 other providers of technical assistance as the Adminis-
3 trator finds appropriate.

4 (f) COMPLETION OF PROGRAM PARTICIPATION.—A
5 small business concern shall have completed the Program
6 if the Administrator determines that it is financially sound
7 and has successfully performed a Federal contract.

8 (g) NET WORTH REQUIREMENTS.—

9 (1) ESTABLISHMENT OF MAXIMUM LEVELS.—

10 Not later than 180 days, the Administrator shall es-
11 tablish, for each industry classification, a maximum
12 level of net worth for a small business entering the
13 Program. In establishing such maximum levels, the
14 Administrator shall take into consideration the cap-
15 ital needs of each industry.

16 (2) TREATMENT OF REAL ESTATE.—In deter-
17 mining the net worth of a small business concern for
18 purposes of this subsection, the Administrator shall
19 not include the value of any real estate owned by the
20 owner of the small business concern.

21 (3) TRANSITIONAL RULE.—Until the Adminis-
22 trator establishes maximum net worth levels pursu-
23 ant to paragraph (1), the maximum net worth of a
24 small business eligible to enter the Program shall
25 not exceed \$750,000.

1 **TITLE II—MODIFICATIONS TO**
2 **8(a) PROGRAM**

3 **SEC. 201. PURPOSE.**

4 The purpose of this title is as follows:

5 (1) to ensure that the section 8(a) program of
6 the Small Business Act continues as an effective de-
7 velopmental business tool that aids in the further
8 growth of minority entrepreneurs.

9 (2) To enhance the section 8(a) program to ac-
10 curately reflect the dynamics of the modern procure-
11 ment system so as to better equip minority small
12 businesses to obtain contracts.

13 **SEC. 202. ADMINISTRATION OF SECTION 8(a) PROGRAM.**

14 (a) MODIFICATIONS TO 8(a) PROGRAM.—Notwith-
15 standing any provision of the Small Business Act (15
16 U.S.C. 631 et seq.), the Administrator shall administer
17 the program under section 8(a) of such Act with the fol-
18 lowing modifications:

19 (1) PROGRAM PARTICIPATION REQUIREMENT.—

20 (A) REQUIREMENT.—No small business
21 concern shall be eligible to participate in the
22 program under section 8(a) of the Small Busi-
23 ness Act (15 U.S.C. 637(a)) before completing
24 the Program established under section 2.

1 (B) WAIVER OF PARTICIPATION REQUIRE-
2 MENT.—The requirement under subparagraph
3 (A) may be waived if the Administrator deter-
4 mines that a small business concern is finan-
5 cially sound and has successfully completed a
6 Federal contract.

7 (2) LIMITATION ON AGGREGATE VALUE OF
8 CONTRACTS.—The aggregate value of the contracts
9 a participant in the program under such section may
10 enter into shall not exceed \$100,000,000.

11 (3) ECONOMIC DISADVANTAGE.—

12 (A) DEADLINE FOR DETERMINATION OF
13 MAXIMUM LEVELS OF NET WORTH.—Not later
14 than 180 days after the date of the enactment
15 of this Act, the Administrator shall establish,
16 for each industry classification, a maximum
17 level of net worth for an economically disadvan-
18 taged individual. In establishing such maximum
19 levels, the Administrator shall take into consid-
20 eration the capital needs of each industry.

21 (B) DETERMINATION FOR TERM OF PRO-
22 GRAM.—For the purpose of this section, an in-
23 dividual who has been determined by the Ad-
24 ministrator to be economically disadvantaged at
25 the time of program entry shall be deemed to

1 be economically disadvantaged for the term of
2 the program.

3 (C) PERSONAL NET WORTH.—In deter-
4 mining personal net worth for the purpose of
5 program entry, the Administrator shall exclude
6 from such determination the following:

7 (i) The value of any investment of a
8 disadvantaged owner have in the small
9 business concern, except that such value
10 shall be taken into account under this
11 paragraph when comparing such concerns
12 to other concerns in the same business
13 area that are owned by other than socially
14 disadvantaged persons.

15 (ii) The equity of a disadvantaged
16 owner in a primary personal residence.

17 (D) MAXIMUM NET WORTH.—The Admin-
18 istrator shall not establish a maximum net
19 worth that prohibits program entry of less than
20 \$750,000.

21 (b) MODIFICATIONS TO DEVELOPMENTAL PHASE.—

22 (1) ELIGIBILITY FOR RESTRICTED COMPETI-
23 TION CONTRACTS.—A small business concern par-
24 ticipating in the developmental phase of such pro-
25 gram, shall be eligible to enter into a contract

1 awarded using procedures other than competitive
2 procedures that—

3 (A) is assigned an industrial classification
4 code for manufacturing and is valued at not
5 more than \$10,000,000; or

6 (B) is assigned an industrial classification
7 code other than a code for manufacturing and
8 is valued at not more than \$6,000,000.

9 (2) DURATION OF PHASE.—A small business
10 concern participating in such program shall complete
11 the developmental phase of the program in six years.

12 (c) MODIFICATIONS TO TRANSITIONAL PHASE.—

13 (1) REDUCTION OF SOLE SOURCE CON-
14 TRACTS.—In each year of the transitional phase, a
15 small business concern participating in such pro-
16 gram shall—

17 (A) reduce by 25 percent the aggregate
18 value of the contracts it performs that are
19 awarded using procedures other than competi-
20 tive procedures; and

21 (B) increase the aggregate value of the
22 contracts (awarded under this section or other-
23 wise) it performs that are awarded using com-
24 petitive procedures.

1 (2) ELIGIBILITY FOR RESTRICTED COMPETI-
2 TION CONTRACTS.—A small business concern par-
3 ticipating in the transitional phase of such program,
4 shall be eligible to enter into a contract awarded
5 using procedures other than competitive procedures
6 that—

7 (A) is assigned an industrial classification
8 code for manufacturing and is valued at not
9 more than \$10,000,000; or

10 (B) is assigned an industrial classification
11 code other than a code for manufacturing and
12 is valued at not more than \$6,000,000.

13 (d) EFFECTIVE DATE FOR MODIFICATIONS TO THE
14 8(a) PROGRAM.—

15 (1) IN GENERAL.—This Act shall apply with re-
16 spect to small business concerns that apply to the
17 program under section 8(a) of the Small Business
18 Act after the date of the enactment of this Act.

19 (2) TRANSITIONAL RULE.—A small business
20 concern participating in the program under section
21 8(a) of the Small Business Act (15 U.S.C. 637(a))
22 may participate for not more than ten years.

1 **TITLE III—POST-8(a)**
2 **ASSISTANCE**

3 **SEC. 301. PURPOSE.**

4 The purpose of this title is as follows:

5 (1) To provide a restricted contracting competi-
6 tion program limited to small business concerns that
7 have successfully graduated from the section 8(a)
8 program and certified small disadvantaged busi-
9 nesses.

10 (2) To enable 8(a) program graduates to utilize
11 the expertise they have developed during the pro-
12 gram.

13 (3) To increase minority business representa-
14 tion in the Federal marketplace.

15 **SEC. 302. RETENTION OF STATUS AFTER COMPLETION OF**
16 **8(a) PROGRAM.**

17 A small business concern that successfully completes
18 the program under section 8(a) of the Small Business Act
19 (15 U.S.C. 637(a)) shall be considered a small disadvan-
20 taged business for purposes of Government contracting
21 unless the ownership or control of the small business con-
22 cern changes.

1 **SEC. 303. RESTRICTED COMPETITION FOR SMALL BUSI-**
2 **NESSES OWNED AND CONTROLLED BY SO-**
3 **CIALY AND ECONOMICALLY DISADVAN-**
4 **TAGED INDIVIDUALS.**

5 (a) **AUTHORITY TO RESTRICT COMPETITION.**—Sec-
6 tion 8 of the Small Business Act (15 U.S.C. 637(a)) is
7 amended by adding at the end the following new sub-
8 section:

9 “(o) **RESTRICTED COMPETITION FOR SMALL BUSI-**
10 **NESSES OWNED AND CONTROLLED BY SOCIALLY AND**
11 **ECONOMICALLY DISADVANTAGED INDIVIDUALS.**—

12 “(1) **AUTHORITY TO RESTRICT COMPETITION.**—

13 In accordance with this subsection, a contracting of-
14 ficer may restrict competition for any contract for
15 the procurement of goods or services by the Federal
16 Government to small business concerns owned and
17 controlled by socially and economically disadvan-
18 taged individuals, if—

19 “(A) each of the concerns is not less than
20 51 percent owned by one or more socially and
21 economically disadvantaged individuals (and
22 such ownership is determined without regard to
23 any community property law);

24 “(B) the contracting officer has a reason-
25 able expectation that two or more small busi-
26 ness concerns owned and controlled by socially

1 and economically disadvantaged individuals will
2 submit offers for the contract;

3 “(C) the contract is for the procurement of
4 goods or services with respect to an industry
5 identified by the Secretary of Commerce as
6 underrepresented by small business concerns
7 owned and controlled by socially and economi-
8 cally disadvantaged individuals;

9 “(D) the anticipated award price of the
10 contract (including options) does not exceed—

11 “(i) \$10,000,000, in the case of a con-
12 tract assigned an industrial classification
13 code for manufacturing; or

14 “(ii) \$6,000,000, in the case of all
15 other contracts;

16 “(E) in the estimation of the contracting
17 officer, the contract award can be made at a
18 fair and reasonable price; and

19 “(F) each of the concerns—

20 “(i) is certified by a Federal agency,
21 a State government, or a national certi-
22 fying entity approved by the Adminis-
23 trator, as a small business concern owned
24 and controlled by socially and economically
25 disadvantaged individuals; or

1 “(ii) certifies to the contracting officer
2 that it is a small business concern owned
3 and controlled by socially and economically
4 disadvantaged individuals and provides
5 adequate documentation, in accordance
6 with standards established by the Adminis-
7 tration, to support such certification.

8 “(2) ENFORCEMENT; PENALTIES.—

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

12 “(i) the filing, investigation, and dis-
13 position by the Administration of any chal-
14 lenge to the eligibility of a small business
15 concern to receive assistance under this
16 subsection (including a challenge, filed by
17 an interested party, relating to the veracity
18 of a certification made or information pro-
19 vided to the Administration by a small
20 business concern under paragraph (1)(F));
21 and

22 “(ii) verification by the Administrator
23 of the accuracy of any certification made
24 or information provided to the Administra-

1 tion by a small business concern under
2 paragraph (1)(F).

3 “(B) EXAMINATIONS.—The procedures es-
4 tablished under subparagraph (A) may provide
5 for program examinations (including random
6 program examinations) by the Administrator of
7 any small business concern making a certifi-
8 cation or providing information to the Adminis-
9 trator under paragraph (1)(F).

10 “(C) PENALTIES.—In addition to the pen-
11 alties described in section 16(d), any small busi-
12 ness concern that is determined by the Admin-
13 istrator to have misrepresented the status of
14 that concern as a small business concern owned
15 and controlled by socially and economically dis-
16 advantaged individuals for purposes of this sub-
17 section, shall be subject to—

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

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

22 “(3) PROVISION OF DATA.—Upon the request
23 of the Administrator, the head of any Federal de-
24 partment or agency shall promptly provide to the
25 Administrator such information as the Adminis-

1 trator determines to be necessary to carry out this
2 subsection.

3 “(4) DEFINITIONS.—In this subsection, the fol-
4 lowing definitions apply:

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

9 “(B) SMALL BUSINESS CONCERN OWNED
10 AND CONTROLLED BY SOCIALLY AND ECONOMI-
11 CALLY DISADVANTAGED INDIVIDUALS.—The
12 term ‘small business concern owned and con-
13 trolled by socially and economically disadvan-
14 taged individuals’ has the meaning given such
15 term under subsection (d)(3)(C).”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to a contracts an-
18 nounced after the date of the enactment of this Act.

○