

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5271

To amend the Small Business Act to make modifications to the small business and capital ownership development program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

Mr. MFUME (for himself, Mr. CONYERS, Mr. FLAKE, Ms. ROYBAL-ALLARD, Ms. VELÁZQUEZ, and Mr. TUCKER) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act to make modifications to the small business and capital ownership development program, and for other purposes.

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.**

4 This Act may be cited as the “Minority Enterprise  
5 Development Act of 1994”.

1 **TITLE I—AMENDMENTS TO MI-**  
2 **NORITY SMALL BUSINESS**  
3 **AND CAPITAL OWNERSHIP**  
4 **DEVELOPMENT PROGRAM**

5 **SEC. 101. MINORITY ENTERPRISE DEVELOPMENT PRO-**  
6 **GRAM.**

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

9 (1) by striking “(10) There is established” and  
10 all that follows before subparagraph (A) and insert-  
11 ing the following:

12 “(10)(A) There is established within the Administra-  
13 tion a Minority Enterprise Development Program (herein-  
14 after in this subsection referred to as the ‘Program’),  
15 which shall be administered by the Associate Adminis-  
16 trator for Minority Enterprise Development in accordance  
17 with this paragraph and section 8(a).”;

18 (2) by striking subparagraph (B); and

19 (3) by striking “(A) The Program” and insert-  
20 ing “(B) The Program”.

21 (b) ASSISTANCE UNDER THE PROGRAM.—Section  
22 7(j)(10)(B)(i) of the Small Business Act, as redesignated  
23 by subsection (a) of this section, is amended by inserting  
24 “Phase III of” after “small business concerns participat-  
25 ing in”.

1 (c) CONFORMING AMENDMENTS.—The Small Busi-  
2 ness Act (15 U.S.C. 601 et seq.) is amended by striking  
3 “Minority Small Business and Capital Ownership Devel-  
4 opment” and inserting “Minority Enterprise Develop-  
5 ment” each place it appears in sections 7(j)(10)(G),  
6 7(j)(11)(A), 7(j)(11)(E), 7(j)(11)(H), 7(j)(11)(I),  
7 8(a)(18)(C)(ii)(III), and 8(a)(20)(B).

8 **SEC. 102. GRANDFATHERING PROVISION.**

9 Section 7(j)(10)(C) of the Small Business Act (15  
10 U.S.C. 636(j)(10)(C)) is amended to read as follows:

11 “(C) A small business concern participating in  
12 any program or activity conducted under the author-  
13 ity of this paragraph or eligible for the award of  
14 contracts pursuant to section 8(a) on the date of the  
15 enactment of the Minority Enterprise Development  
16 Act of 1994 shall be permitted continued participa-  
17 tion in Phase III of the Program for the remaining  
18 period of its original program term. Any such firm  
19 that has not been awarded a contract pursuant to  
20 section 8(a) may elect to suspend its participation in  
21 Phase III in order to participate in Phase II. Upon  
22 the award of a contract pursuant to section 8(a) or  
23 the completion of a development agreement, the sus-  
24 pension of time for participation in Phase III shall  
25 cease.”.

1 **SEC. 103. BUSINESS PLAN.**

2 Section 7(j)(10)(D) of the Small Business Act (15  
3 U.S.C. 636(j)(10)(D)) is amended—

4 (1) in clause (i), by inserting “Phase III” after  
5 “Promptly after”;

6 (2) in clause (ii), by striking “The plans” in the  
7 matter preceding subclause (I) and inserting “The  
8 business plans”;

9 (3) by amending clause (iii)(IV) to read as fol-  
10 lows:

11 “(IV) A transition management plan  
12 outlining specific steps to enhance the  
13 prospect of profitable business operations  
14 after the expiration of the 9-year Phase III  
15 program term specified in paragraph  
16 (15).”;

17 (4) in clause (iii)—

18 (A) in the first sentence by striking “Each  
19 Program Participant” and inserting “Each  
20 Phase III Program Participant”; and

21 (B) in the forth sentence by striking “the  
22 transitional stage” and inserting “Phase III”;  
23 and

24 (5) in clause (iv), by striking “Each Program  
25 Participant” and inserting “Each Phase III Pro-  
26 gram Participant”.

1 **SEC. 104. USE OF CONTRACT SUPPORT LEVELS.**

2 Section 7(j)(10)(D) of the Small Business Act (15  
3 U.S.C. 636(j)(10)(D)) is further amended by adding at  
4 the end the following new clause:

5 “(v) The forecasts of overall business activity con-  
6 tained in the business plan of a Program Participant or  
7 the estimate contained in the section 8(a) contract support  
8 level of such firm shall not be used by the Administration  
9 to make a determination that such firm is ineligible for  
10 the award of a contract to be awarded pursuant to section  
11 8(a).”.

12 **SEC. 105. PHASE III REQUIREMENTS.**

13 Section 7(j)(10)(I) of the Small Business Act (15  
14 U.S.C. 636(j)(10)(I)) is amended—

15 (1) in clause (i), by striking “During the devel-  
16 opmental stage of its participation in the Program,”  
17 and inserting “During its first 4 years of participa-  
18 tion in Phase III of the Program,”;

19 (2) in clause (ii), by striking “During the tran-  
20 sitional stage of the Program” and inserting “Dur-  
21 ing years 5 through 9 of its participation in Phase  
22 III of the Program,”;

23 (3) by amending clause (iii)(I) to read as fol-  
24 lows:

25 “(I) establish business activity targets ap-  
26 plicable to Program Participants during the 5th

1 year and each succeeding year of the concern's  
2 participation in Phase III which reflect a rea-  
3 sonably consistent increase in contracts award-  
4 ed other than pursuant to section 8(a) and are  
5 expressed as a percentage of total sales cor-  
6 responding to the concern's fiscal year;"; and  
7 (4) in clause (iii)(IV) by inserting "in Phase III  
8 of the Program" after "performance".

9 **SEC. 106. IMPROVED STATUS PROTEST SYSTEM.**

10 Section 7(j)(10)(J) of the Small Business Act (15  
11 U.S.C. 636(j)(10)(J)) is amended by striking clause (ii)  
12 and inserting the following new clauses:

13 "(ii) A protest may be brought regarding a self-  
14 certification by a business concern regarding its sta-  
15 tus as a small business concern owned and con-  
16 trolled by socially and economically disadvantaged  
17 individuals by—

18 "(I) another person with a direct economic  
19 interest in the award of the contract or sub-  
20 contract under which such business has alleg-  
21 edly made the false certification regarding its  
22 status as a small business concern owned and  
23 controlled by socially and economically dis-  
24 advantaged individuals;

1           “(II) a prime contractor receiving specific  
2           and credible information that an actual or pro-  
3           spective subcontractor or supplier has falsely  
4           certified its status as a small business concern  
5           owned and controlled by socially and economi-  
6           cally disadvantaged individuals;

7           “(III) a contracting officer receiving a self-  
8           certification regarding an actual or prospective  
9           contractor’s status, which such officer reason-  
10          ably believes to be false; or

11          “(IV) the Associate Administrator for Mi-  
12          nority Enterprise Development.

13          “(iii) The Office of Hearings and Appeals shall  
14          hear appeals regarding the status of a concern as a  
15          small business concern owned and controlled by so-  
16          cially and economically disadvantaged individuals for  
17          purposes of any program or activity conducted under  
18          section 8(d) or any other Federal law that refers to  
19          such section for a definition of program eligibility.

20          “(iv) A decision issued pursuant to clause (iii)  
21          shall—

22                  “(I) be made available to all parties to the  
23                  proceeding;

24                  “(II) be published in full text; and

1           “(III) include findings of fact and conclu-  
2           sions of law, with specific reasons supporting  
3           such findings and conclusions, on each material  
4           issue of fact and law of decisional significance  
5           regarding the disposition of the protest.

6           “(v) A decision issued pursuant to clause (iii)  
7           shall be considered a final agency action, and shall  
8           be subject to judicial review under section 553 of  
9           title 5, United States Code.

10           “(vi) If a firm engages in a pattern of misrepre-  
11           sentations regarding the status of the firm in viola-  
12           tion of section 16(d)(1), the Administration or the  
13           aggrieved executive agency shall initiate an action to  
14           impose an appropriate penalty under section  
15           16(d)(2).”.

16 **SEC. 107. CONTINUED PROGRAM PARTICIPATION.**

17           Section 7(j)(11)(D) of the Small Business Act (15  
18           U.S.C. 636(j)(11)(D)) is amended to read as follows:

19           “(D)(i) A Program Participant shall remain eligible  
20           for participation in the Program after a transfer of an  
21           ownership interest in the firm if ownership and control  
22           (as required by section 8(a)(4)) is retained by the socially  
23           and economically disadvantaged individuals upon whom  
24           Program eligibility is based.

1       “(ii) A Program Participant shall remain eligible for  
2 participation in the Program after transfer of ownership  
3 and control (as required by section 8(a)(4)) to individuals  
4 who are determined to be socially and economically dis-  
5 advantaged pursuant to section 8(a). Unless graduated or  
6 terminated, the Program Participant shall be eligible for  
7 a period of continued Program participation not to exceed  
8 the period described in paragraph (15).

9       “(iii) A Program Participant that is a tribally owned  
10 corporation may remain eligible for participation in the  
11 Program with other than a Native American as the firm’s  
12 chief executive officer (or chief operating officer), if the  
13 governing body of the Indian tribe certifies to the Admin-  
14 istration that it was unable to hire a qualified Native  
15 American after conducting a national recruitment for such  
16 an individual.”.

17 **SEC. 108. PROGRAM ADMISSION.**

18       Section 7(j)(11)(F) of the Small Business Act (15  
19 U.S.C. 636(j)(11)(F)) is amended to read as follows:

20       “(F) Subject to the provisions of section 8(a)(9), the  
21 Division shall—

22               “(i) make recommendations on requests for re-  
23               consideration of denied applications for entry into  
24               Phase III of the Program to the Associate Adminis-  
25               trator for Minority Enterprise Development;

1           “(ii) make requests for the initiation of suspen-  
2           sion, termination, or graduation proceedings, as ap-  
3           propriate, to the Associate Administrator for Minor-  
4           ity Enterprise Development; and

5           “(iii) implement such policy directives as may  
6           be issued by the Associate Administrator for Minor-  
7           ity Enterprise Development pursuant to subpara-  
8           graph (I) regarding, among other things, the geo-  
9           graphic distribution of concerns to be admitted into  
10          the Program and the industrial makeup of such con-  
11          cerns.”.

12 **SEC. 109. PROGRAM PHASES.**

13          (a) ESTABLISHMENT.—Section 7(j)(12) of the Small  
14 Business Act (15 U.S.C. 636(j)(12)) is amended to read  
15 as follows:

16          “(12)(A) The Administration shall segment the Pro-  
17 gram into 3 phases: a startup phase, a developmental  
18 phase, and a section 8(a) contracting phase, which shall  
19 be known as Phase I, Phase II, and Phase III, respec-  
20 tively.

21          “(B) The startup phase of program participation  
22 shall be designed to assist newly formed or forming con-  
23 cerns in overcoming their economic disadvantage by pro-  
24 viding such assistance as may be necessary and appro-

1 piate to achieve a business foundation adequate for fu-  
2 ture growth.

3 “(C) The developmental stage of program participa-  
4 tion shall be designed to assist the concern in its effort  
5 to overcome its economic disadvantage by providing such  
6 assistance as may be necessary and appropriate to access  
7 its markets and to strengthen its financial and managerial  
8 skills.

9 “(D) The section 8(a) contracting stage of program  
10 participation shall be designed to overcome, insofar as  
11 practicable, the remaining elements of economic disadvan-  
12 tage, and to further develop the concern towards economic  
13 viability.”.

14 (b) MAXIMUM PERIOD OF PARTICIPATION IN EACH  
15 PHASE.—Section 7(j)(15) of the Small Business Act (15  
16 U.S.C. 636(j)(15)) is amended to read as follows:

17 “(15) An eligible small business concern may receive  
18 developmental assistance under the Program for the fol-  
19 lowing periods as measured from the date of entry into  
20 the applicable phase of the Program—

21 “(A) not more than 2 years may be spent in  
22 Phase I of program participation;

23 “(B) not more than 3 years may be spent in  
24 Phase II of program participation; and

1           “(C) not more than 9 years may be spent in  
2           Phase III of program participation.”.

3 **SEC. 110. DEVELOPMENTAL ASSISTANCE AUTHORIZED FOR**  
4 **PROGRAM PARTICIPANTS.**

5           Section 7(j)(13) of the Small Business Act (15  
6 U.S.C. 636(j)) is amended—

7           (1) in the matter preceding subparagraph (A),  
8           by striking “during the stages of program participa-  
9           tion specified in paragraph 12” and inserting “dur-  
10          ing its term of participation in the Program”; and

11          (2) by striking subparagraph (J).

12 **SEC. 111. TEST PROGRAM FOR USE OF SURETY BOND**  
13 **WAIVERS.**

14          Section 7(j)(13)(D) of the Small Business Act (15  
15 U.S.C. 636(j)(13)(D)) is amended—

16          (1) by striking clauses (i) through (iii);

17          (2) by striking “(D) A maximum” and inserting  
18          “(D)(i) A maximum”;

19          (3) by striking “, except that, such exemptions  
20          may be granted under this subparagraph only if—  
21          ” and inserting a period; and

22          (4) by adding at the end the following new  
23          clauses:

24                  “(ii) The agency with contracting authority  
25                  may, upon the request of the Program Partici-

1           pant, grant an exemption pursuant to clause  
2           (i), if—

3                   “(I) the Program Participant provides  
4                   certification, in the form prescribed by the  
5                   Administration, that the firm was unable  
6                   to obtain the requisite bonding from cor-  
7                   porate surety bonding firms;

8                   “(II) the Program Participant has  
9                   provided for the protection of persons fur-  
10                  nishing materials or labor under the con-  
11                  tract by arranging for—

12                           “(aa) the direct disbursement of  
13                           funds owed to such persons by the  
14                           procuring agency or through an es-  
15                           crow account provided by any bank  
16                           the deposits of which are insured by  
17                           the United States Government; or

18                           “(bb) irrevocable letters of credit  
19                           (or other alternatives to surety bond-  
20                           ing acceptable to the procuring agen-  
21                           cy); and

22                   “(III) the award value of the contract  
23                   for which the exemption is being sought  
24                   does not exceed \$1,000,000.

1           “(iii) The authority to grant an exemption  
2           under clause (ii) shall cease to be effective on  
3           September 30, 1997.”.

4 **SEC. 112. STRATEGIC ALLIANCES.**

5           Section 7(j)(14) of the Small Business Act (15  
6 U.S.C. 636(j)) is amended to read as follows:

7           “(14)(A) Small business concerns that have com-  
8           pleted the 9-year Phase III program term specified in  
9           paragraph (15) (in this paragraph referred to as a “Pro-  
10          gram Graduate”) shall be authorized to assist Phase III  
11          Program Participants, determined by the Administration  
12          to be eligible for such assistance, to develop within the  
13          Program.

14          “(B) A Program Graduate may provide assistance to  
15          a Phase III Program Participant under this paragraph—

16                 “(i) by providing, among other things, manage-  
17                 rial assistance, technical assistance, and financial  
18                 support; and

19                 “(ii) by entering into subcontracts for the per-  
20                 formance of specific contracts awarded under section  
21                 8(a).

22          “(C) In determining the eligibility of a small business  
23          concern to receive assistance or contracts under this sub-  
24          section or section 8(a), the Administration shall not take

1 into account any assistance received under this paragraph  
2 from a Program Graduate.”.

3 **SEC. 113. BUSINESS LOANS.**

4 Section 7(a)(20)(B)(ii) of the Small Business Act (15  
5 U.S.C. 636(a)(20)(B)(ii)) is amended by striking “be not  
6 less than 85 per centum” and inserting “not exceed 95  
7 percent of the balance of the financing outstanding at the  
8 time of disbursement where the purpose of the financing  
9 is to finance government contracts, and shall not exceed  
10 90 percent of the balance of the financing outstanding at  
11 the time of disbursement where the purpose of the financ-  
12 ing is for general working capital as a line of credit”.

13 **TITLE II—AMENDMENTS TO**  
14 **CONTRACTING PROGRAM**

15 **SEC. 201. CONTRACT AWARD PROCEDURES.**

16 Section 8(a)(1) of the Small Business Act (15 U.S.C.  
17 637(a)(1)) is amended by striking “(a)(1) It shall be the  
18 duty” and all that follows through subparagraph (D) and  
19 inserting the following:

20 “(a)(1)(A) The Administration shall seek the estab-  
21 lishment of contract goals under section 15(g) which will  
22 assure that contracts sufficient to satisfy the contract sup-  
23 port levels identified by participants in the Minority En-  
24 terprise Development Program established by section

1 7(j)(10) are designated by the various Federal agencies  
2 for award pursuant to this subsection.

3 “(B) Except as provided in subparagraph (D), the  
4 Administration may enter into prime contracts with pro-  
5 curing agencies and subcontract performance of such con-  
6 tracts to qualified Phase III Program Participants on a  
7 sole-source basis or may delegate to procuring agencies  
8 under such conditions as the Administration considers ap-  
9 propriate the authority to enter into sole-source contracts  
10 with Phase III Program Participants. In any case in which  
11 the Administration accepts a requirement for potential  
12 award pursuant to this subsection and determines that a  
13 particular Phase III Program Participant is eligible for  
14 and responsible to perform such contract, the procuring  
15 agency contracting officer shall be authorized in the offi-  
16 cer’s discretion to let the procurement contract upon such  
17 terms and conditions as may be agreed upon between the  
18 procuring agency contracting officer and the Program  
19 Participant.

20 “(C)(i) The Administration shall determine the eligi-  
21 bility of the Program Participant to receive the award in  
22 accordance with the eligibility criteria listed in paragraph  
23 (16).

1       “(ii) With respect to an individual contracting oppor-  
2 tunity, the Administration may provide, upon a request  
3 by the Program Participant, assistance with respect to—

4               “(I) the negotiation of the terms and conditions  
5 of the award; and

6               “(II) the resolution of controversies arising  
7 from the performance of the contract prior to such  
8 contract performance controversies becoming formal  
9 contract disputes within the meaning of the Contract  
10 Disputes Act of 1978.

11       “(iii) In the event of an adverse decision by an agency  
12 regarding a contracting opportunity, the Administrator  
13 may—

14               “(I) not later than 5 days after receiving notice  
15 of such adverse decision, file a notice of intent to ap-  
16 peal with the head of the agency; and

17               “(II) not later than 15 days after receiving  
18 such notice, file an appeal with the head of the agen-  
19 cy requesting reconsideration of the adverse decision.

20       “(iv) Upon receipt of the notice of intent to file an  
21 appeal under clause (iii)(I), further action regarding  
22 award of the contract shall be suspended, unless the head  
23 of the agency makes a written determination, supported  
24 by specific findings, that urgent and compelling cir-  
25 cumstances that significantly affect the interests of the

1 United States will not permit reconsideration of the ad-  
2 verse decision.

3 “(v) If the head of the agency sustains the adverse  
4 decision upon reconsideration, the decision by the head of  
5 the agency shall be in writing and shall be supported by  
6 specific findings.

7 “(vi) An adverse decision regarding the responsibility  
8 of a Program Participant in competitive awards under this  
9 subsection shall be decided pursuant to subsection (b)(7).

10 “(vii) For the purposes of this subparagraph, an ad-  
11 verse decision by a contracting officer includes—

12 “(I) failing to respond, within 15 days or such  
13 additional time as may be agreed to by the Adminis-  
14 tration, to a request from the Administration to  
15 make a specific contracting opportunity available for  
16 award pursuant to this subsection;

17 “(II) declining to make available for award  
18 under this subsection a contracting opportunity (or  
19 class of contracting opportunities) or failing to sup-  
20 port such a determination with specific findings; and

21 “(III) failing to reach agreement with the Pro-  
22 gram Participant with respect to the terms and con-  
23 ditions of a contract selected for award under this  
24 subsection.

1 “(D) A contract opportunity offered for award pursu-  
2 ant to this subsection may be awarded as a sole-source  
3 contract if the anticipated award price of the contract (in-  
4 cluding options) will not exceed \$10,000,000 in the case  
5 of a contract opportunity assigned a standard industrial  
6 classification code for manufacturing and \$7,000,000 (in-  
7 cluding options) in the case of all other contract opportu-  
8 nities.”.

9 **SEC. 202. COMPETITION REQUIREMENTS.**

10 Section 8(a)(1)(D) of the Small Business Act (15  
11 U.S.C. 637(a)(1)(D)) is amended—

12 (1) by redesignating clause (ii) as clause (iii);

13 and

14 (2) by inserting after clause (i) the following  
15 new clause:

16 “(ii) Whenever a requirements-type contract (includ-  
17 ing a task order contract, indefinite quantity contract, or  
18 indefinite delivery contract) is to be awarded, the thresh-  
19 olds for competition required under clause (i)(II) shall be  
20 calculated on the basis of the estimated total value of the  
21 contract.”.

22 **SEC. 203. TIMELY DETERMINATION OF ELIGIBILITY FOR**  
23 **CONTRACT AWARD.**

24 (a) IN GENERAL.—Section 8(a)(16) of the Small  
25 Business Act (15 U.S.C. 637(a)(16)) is amended—

1           (1) by redesignating subparagraph (B) as sub-  
2           paragraph (E); and

3           (2) by striking subparagraph (A) and inserting  
4           the following:

5           “(A) Upon receipt of notification that a Federal  
6           agency intends to consider a Program Participant for  
7           award of a contract pursuant to this subsection (on a com-  
8           petitive or noncompetitive basis), the Administration shall  
9           promptly notify the agency regarding the eligibility of the  
10          Program Participant for award of the contract, and shall  
11          identify all matters that could reasonably be expected to  
12          render the Program Participant ineligible at the time of  
13          the contract award.

14          “(B) A Program Participant may be found to be in-  
15          eligible for award of the contract pursuant to this sub-  
16          section, if—

17                 “(i) the Program Participant is not in compli-  
18                 ance with its competitive business activity targets es-  
19                 tablished pursuant to section 7(j)(10)(I); or

20                 “(ii) the Program Participant has failed to  
21                 make the submissions required under paragraph  
22                 (6)(B).

23          “(C) A small business concern owned and controlled  
24          by socially and economically disadvantaged individuals

1 that has completed its Program Participation term pursu-  
2 ant to section 7(j)(15) shall be eligible for award if—

3 “(i) a requirement has been offered to and ac-  
4 cepted by the Administration for the Program; and

5 “(ii)(I) in the case of a contract to be competi-  
6 tively awarded, the prospective contract recipient  
7 was a Program Participant eligible for award of the  
8 contract on the date specified for receipt of offers,  
9 and such firm had timely submitted an offer (includ-  
10 ing price); or

11 “(II) in the case of a contract to be non-  
12 competitively awarded, the prospective contract re-  
13 cipient was a Program Participant eligible for award  
14 of the contract on the date specified by the agency  
15 contracting officer for the submission of an offer (in-  
16 cluding price).

17 “(D) If the Administration determines that a Pro-  
18 gram Participant is ineligible for consideration for award  
19 of a contract under subparagraph (B) or (C), the deter-  
20 mination shall be supported by specific findings. The de-  
21 termination (and supporting findings) shall be furnished  
22 to the Program Participant and to the contracting officer  
23 for the agency providing the contracting opportunity.”.

24 (b) CONFORMING AMENDMENTS.—Section 8(a) of  
25 the Small Business Act (15 U.S.C. 637(a)) is amended—

1 (1) in paragraph (3)—

2 (A) by striking subparagraph (A) and in-  
3 serting the following:

4 “(A) [Reserved].”; and

5 (B) by striking subparagraph (D) and in-  
6 serting the following:

7 “(D) Subsequent to the award of a contract under  
8 this subsection, if requested by the recipient of the con-  
9 tract, the Administration shall not publicly disclose the  
10 agency’s estimate of the fair market price.”;

11 (2) in paragraph (7), by striking subparagraph  
12 (A) and inserting the following:

13 “(A) [Reserved].”;

14 (3) in paragraph (12)(A), by striking “eligible  
15 to receive subcontracts” and inserting “eligible for  
16 contract awards”; and

17 (4) in paragraph (9)(B)—

18 (A) in clause (iii), by striking “and”;

19 (B) by redesignating clause (iv) as clause  
20 (v); and

21 (C) by inserting after clause (iii) the fol-  
22 lowing new clause:

23 “(iv) a determination of ineligibility for award  
24 of a contract pursuant to paragraph (16)(B); and”.

1 **SEC. 204. CONTINUED CONTRACT PERFORMANCE.**

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

4 (1) in subparagraph (B), by striking “The Ad-  
5 ministrator may, on a nondelegable basis, waive the  
6 requirements of subparagraph (A) only if one of the  
7 following conditions exist:” and inserting “The re-  
8 quirements of subparagraph (A) may be waived  
9 under any of the following circumstances:”; and

10 (2) by striking subparagraph (C) and inserting  
11 the following:

12 “(C)(i) Except as provided in clause (ii), a request  
13 for a waiver pursuant to subparagraph (B) shall be sub-  
14 mitted prior to the actual relinquishment of ownership or  
15 control.

16 “(ii) Under the circumstances described in subpara-  
17 graph (B)(iii), the waiver request shall be made as soon  
18 as practicable after the incapacity or death occurs.”.

19 **SEC. 205. TRANSITION COMPETITIONS FOR PROGRAM**  
20 **GRADUATES.**

21 Section 8(a) of the Small Business Act (15 U.S.C.  
22 637(a)) is amended by adding at the end the following  
23 new paragraph:

24 “(22)(A) A small business concern owned and con-  
25 trolled by socially and economically disadvantaged individ-  
26 uals, which has graduated from the Minority Enterprise

1 Development Program, may participate in the competition  
2 for a contracting opportunity to be awarded pursuant to  
3 this subsection if—

4 “(i) the firm is currently performing satisfac-  
5 torily a contract to furnish the same (or substan-  
6 tially similar) products or services under a contract  
7 competitively awarded pursuant to paragraph (1);

8 “(ii) closing date for receipt of proposals for the  
9 contracting opportunity is a date after the date on  
10 which the firm will no longer be eligible for award  
11 of contracts pursuant to paragraph (1);

12 “(iii) the firm is otherwise eligible to compete  
13 for the contract;

14 “(iv) the Associate Administrator for Minority  
15 Enterprise Development grants the firm’s request to  
16 participate in the competition otherwise restricted to  
17 Program Participants after making a determination  
18 that denial of the firm’s request would deprive such  
19 firm of 25 percent or more of its revenue; and

20 “(v) the firm was a Program Participant on  
21 September 30, 1994.

22 “(B) A Program Graduate described in subparagraph  
23 (A) shall be ineligible for award of a contract resulting  
24 from a competition conducted pursuant to paragraph (1),  
25 unless such firm furnishes (and the contracting officer ac-

1 cepts) a plan to subcontract not less than 40 percent of  
2 the award value of the contract to one or more Program  
3 Participants (of which 20 percent shall be awarded to one  
4 or more Program Participants who are emerging small  
5 business concerns, unless such awards are impracticable  
6 after consultation with the Associate Administrator for the  
7 Minority Enterprise Development Program).

8 “(C) This subparagraph shall take effect on October  
9 1, 1994, and shall remain in effect until September 30,  
10 1997.”.

11 **SEC. 206. PROCUREMENT PROCEDURES.**

12 Section 8(c) of the Small Business Act (15 U.S.C.  
13 637(c)) is amended to read as follows:

14 “(c) PROCUREMENT PROCEDURES.—

15 “(1) IN GENERAL.—For the purpose of attain-  
16 ing an agency’s goal for the participation of small  
17 business concerns owned and controlled by socially  
18 and economically disadvantaged individuals pursuant  
19 to section 15(g)(1), the head of a participating exec-  
20 utive agency may enter into contracts using—

21 “(A) less than full and open competition,  
22 by restricting the competition for such awards  
23 to small business concerns owned and controlled  
24 by socially and economically disadvantaged indi-  
25 viduals as defined in subsection (d)(3)(C); and

1           “(B) a price evaluation preference, of not  
2           to exceed 10 percent, when evaluating an offer  
3           received from such a small business concern as  
4           the result of an unrestricted solicitation.

5           “(2) DEFINITION.—For the purposes of this  
6           subsection, the term ‘participating executive agency’  
7           means a Federal agency, as defined in section 3(b),  
8           in the executive branch of the Federal Government,  
9           other than the Department of Defense.”.

○

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