



THE SMALL DISADVANTAGED BUSINESS PROGRAM

Established in 1969 by Executive Order 11458, this Presidential initiative¹ established a procurement set-aside program for Minority Businesses to implement the set-aside provisions² of The Small Business Act, which were *to assist economically underserved and under-represented groups*. P.L. 95-507,³ enacted in 1978, effectively implemented those provisions – *which are not based on race, ethnicity or gender* – by changing the program terminology from "*minority business*" to "*small disadvantaged business*" (SDB). Under the SDB Program, a small business concern that is at least 51% owned and controlled by Hispanics, Blacks, Asian Americans, Veterans, Native Americans and Disabled Veterans can participate.

Under the provisions of the SDB program, '*women*' were also included because, by a "preponderance of evidence," this group was (and still is) underserved and under-represented in federal procurements. In FY06, women-owned businesses received only 3.4% of all Federal contracts while representing 30% of all the small businesses in the Country. In 1994, Congress ordered SBA to increase women's participation to 5%, but the Agency delayed its plan until 2007 by considering issues involving 'gender' as opposed to 'under-representation.'

All individuals in the SDB program must have a net worth of less than \$750,000, excluding the equity in the business and their primary residence. Successful applicants must also meet applicable size standards for small businesses in their industry. To represent itself as a SDB for Federal contracting, a firm was, at one point, required to be certified by SBA, but the Agency stopped their certification program in favor of accepting 'self-certification' by businesses. SBA is still required to maintain a list of SDBs in the Central Contractor Registration (CCR). SDB certification and eligibility criteria can be found at: <http://www.sba.gov/sdb/indexaboutsdb.html>. Private certifiers, however, have continued to offer 'certification of businesses' in this category as this process adds considerable value to state and local efforts.

Contracting officers and large business prime contractors are supposed to search this on-line registry for potential suppliers. The program also requires large business contractors to address their SDB efforts in their Small Business Subcontracting Plan (FAR 19.11 and 19.7). Additionally, Congress had ordered DOT, DOE, AID and NASA to include all women-owned businesses in their disadvantaged business goals.

Although the SDB program establishes price evaluation preferences for SDB firms competing on full and open acquisitions, in FY02 SBA suspended the preference for DOD because SBA claimed DOD had exceeded the 5 percent goal established in 10 U.S.C. 2323(a) for their contract awards to SDBs. An estimated \$20 Billion in 'foreign' contracts, however, have never been counted towards the DOD annual goal because of the 'foreign exemption' (FAR 19.000(b)). The price evaluation adjustment prescribed in FAR 19.11 and DFARS 219.11 has remained suspended for DOD through simple extensions memorandums between SBA and DOD. On October 2008, however, the 5th Circuit Court, on their Rothe decision, told the government that its research needed updating to be able to substantiate a DoD small business regulation intended to improve contracting with disadvantaged businesses.

FPA had proposed to the government – as part of The Umbrella Initiative – to perform specialized research, which would create a new dataset on procurement with businesses from economically disadvantaged communities, which would take into account information on the impediments, and processes which have affected these businesses. This new research would be kept current at an Educational Center devoted to research, education and hosting of forums to public officials in support of the mandates of P.L. 95-507 and its statutes. The Congressional intend of P.L. 95-507 was to make sure small and disadvantaged businesses receive 'maximum practicable utilization' (MPU) in contracting with the government not only at the Federal level, but at the State and local level as well.



¹ <http://www.presidency.ucsb.edu/ws/index.php?pid=60475>

² **set-aside** - \ˈset-ɪ-,sɪd\ - Webster defines it as "a program requiring a percentage of opportunities to be reserved for an underrepresented group."

³ <http://www.fpaportal.org/FPA/NewsAndPress.aspx>