

MEMORANDUM TO THE OSDBU COUNCIL

DATE: August 14, 2003

FROM: Arthuretta H. Martin, Chair Legislative Committee

SUBJECT: August 2003 Legislative Report

The following is the status of proposed legislation before congress affecting small businesses doing business with the Federal Government in the 108th Congress. They include bills that directly name small businesses as well as bills that affect Federal Procurement Policy. This report is submitted for information purposes only.

The August report is in two distinct sections. The first section is the customary format of this report listing legislative activity that occurred subsequent to the prior months report. The second section of this report provides highlights of H.R. 2802 SBA Reauthorization Act and H.R. 1460 veterans Benefits Improvement Act of 2003.

Any recommendations to improving the report should be submitted to me at Arthuretta.martin@hhs.gov.

H.R.2922

Title: To amend the Small Business Act to provide additional grants to small business development centers located in high unemployment districts.

Sponsor: Rep Acevedo-Vila, Anibal [PR] (introduced 7/25/2003) **Cosponsors:** (none)

Latest Major Action: 7/25/2003 Referred to House committee. Status: Referred to the House Committee on Small Business.

S.1375

Title: A bill to provide for the reauthorization of programs administered by the Small Business Administration, and for other purposes.

Sponsor: Sen Snowe, Olympia J. [ME] (introduced 7/8/2003) **Cosponsors:** 1

Latest Major Action: 7/10/2003 Senate committee/subcommittee actions. Status: Committee on Small Business and Entrepreneurship. Ordered to be reported with amendments favorably.

Companion bill to H.R. 2804 - Highlights of the Act

Major Provisions in Federal Contracting

- Broaden definition of Contract Bundling to include consolidations.
- Require PCR's at every major federal center and no less than one PCR in each state.

- Non-payment of subcontractors will become a material breach of contract resulting in non-payment by the Federal Government to the Prime.
 - Require a study by GAO to identify industries in which small women-owned businesses are underrepresented in getting federal contracts.
 - Bill restates the statutory requirement that OSDBU directors report to the head of the agency.
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H.R.2658

Title: Making appropriations for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes.

Sponsor: Rep Lewis, Jerry [CA-41] (introduced 7/2/2003) **Cosponsors:** (none)

Related Bills: [S.1382](#)

Latest Major Action: 7/17/2003 Resolving differences / Conference -- Senate actions.

Status: Senate insists on its amendment, asks for a conference, appoints conferees Stevens; Cochran; Specter; Domenici; Bond; McConnell; Shelby; Gregg; Hutchison; Burns; Inouye; Hollings; Byrd; Leahy; Harkin; Dorgan; Durbin; Reid; Feinstein. bba

Note – this bill will waive the requirement for the Secretary of the Department of Defense to comply with certain Personnel Laws and Procurement Laws in the interest of management efficiencies within DOD Agencies.

H.R.1837

Title: To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

Sponsor: Rep Davis, Tom [VA-11] (introduced 4/29/2003) **Cosponsors:** 1

Latest Major Action: 7/25/2003 House preparation for floor. Status: House Committee on Judiciary Granted an extension for further consideration ending not later than Sept. 3, 2003.

H.R.2802

Title: To reauthorize the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Sponsor: Rep Manzullo, Donald A. [IL-16] (introduced 7/21/2003) **Cosponsors:** 1

Latest Major Action: 7/24/2003 House committee/subcommittee actions. Status: Ordered to be Reported by Voice Vote.

Highlights of the Act (Bill) –

8(a) program

The bill seeks to clarify the purpose of the 8(a) program.

Sec 110 308(c) specifically addresses SBA's use of internal documents that may have the effect of rule making. Sec 110 308(c) clarifies that SBA must adhere to the notice and comment requirements of rulemaking as promulgated under the Administrative Procedure Act.

Sec. 117 SBA's appropriations have been cut in half.

The Act prioritizes congress' preference in federal contracting:

1. 8(a) Company
2. 2. Service-Disabled Veteran (SDVB)
3. 3. HUBZone Company (HUBzone)
4. Women-owned Business (WOB)
5. Small Business (SB)

The bill establishes a legislative cascade in that it stipulates that if there is a firm that can do the work in priority #1, e.g. 8(a), the contracting officer *cannot* award to any company in the lower priority levels.

* SBA may appeal the denial of 8(a) opportunities to the head of the agency. (Sec 208(D)) The agency head must suspend the requirement until the issue is resolved unless there is an urgent and compelling reason to proceed. The Agency head must justify in accordance with regulatory and statutory requirements and place the documentation in the procurement file.

* SBA must be involved in any contractual disputes involving the 8(a) program.

* There is discussion on the need for surety bonds for 8(a) vendors in construction contracts. If the Administrator determines based on the criteria specified in the bill that the bond should not be required, the administrator may waive the requirement for a surety bond.

* Contracting Officer must make a fair market price determination prior to award and submit that determination to SBA for approval.

* 8(a) companies must certify ownership on an annual basis. Ownership must be from a socially disadvantaged individual.

* Individuals can only have one 8(a) company at one time. However if they sell their company, they are eligible to get another company in the 8(a) program.

- * If a contract is ongoing and ownership is altered to a non-8(a) individual, the government contract must be terminated for the convenience of the government.
- * A forecast of opportunities must be prepared exclusively for 8(a) contractors by the head of the agency. The OSDBU and SBA must receive a copy of the forecast.
- * 8(a) companies must use 50% of the cost of the contract for its own employees except in the case of construction contracts. The SBA Administrator must determine the percentage for construction contracts through regulation.
- * 8(a) awards can not be counted towards the accomplishment of small business goals.
- * Person in charge of DBE/8(a) program will be the Associate Administrator for Minority Small Business and Capitol Ownership Development (AA for MSB & COD). It is currently occupied by Mr. Fred Armendariz who has a different title.
- * Net worth is raised from the \$250K (as of 1988) to \$750K (Minimum)
- * The number of years between developmental and transitional stages is switched at 5 to 4 respectively.
- * The 2 year in business requirement of 8(a) applicants will be tempered with identified federal market niche (reformatted and refocused);
- * The 7(j) program (management and technical assistance) will become 8(b), adjunct to 8(a) to emphasize its importance;
- * District Directors will be weaned their almost exclusive focus on banks and lending. The position of Deputy District Director will be eliminated, to be replaced by PCRs (currently 47 in the nation) or CMRs (currently 4). The PCRs will be increased to 150 within 2 years, and the CMRs, to 50. They will be responsible and held accountable to increasing contract volumes for DBEs.
- * Introduction of "Very Small Business" (VSB) Program to start 10 pilot projects in the country. VSB is defined as a company with less than 15 employees; less than \$1 million in revenues; they compete among themselves for procurements that are \$150K or less.

Small Business Administration Personnel Issues

- * If a District Director does not meet the goals for his/her district specified by the Administrator, he must remove that individual from position and place them in the position of Procurement Center Representative (PCR).

* PCR's must be assigned to District Offices as the oversee procuring agencies. PCR's are to report to District Directors.

* All Deputy District Directors are to become PCR's.

* Any SBA employee who was or is a "decision maker" may not engage in transactions under any SBA program either while they are employed by SBA or 2 years after they end their employment with the agency. That means they can not start an 8(a) company after they retire until they have been out of the job for more than two years.

* SBA is being appropriated six million dollars to hire a large business or non profit for management and technical assistance.

* Commercial Marketing rep's must be in every state and have expanded responsibilities. They must review all solicitations for contracts to ensure the maximum practicable opportunity for small business. They are to review compliance by large businesses with their subcontract plans among other things.

Women-Owned Small Businesses

* Strong language on the discrimination women have suffered. The language is stronger than for small disadvantaged businesses.

* Law requires that SBA "remove discriminatory barriers for women". No such language is in the bill for small disadvantaged businesses.

* This bill authorizes restricted competition for women-owned and controlled businesses in specific industries where women are underrepresented. The company must be 51% owned by a woman. However this requirement may be waived if the administrator determines that there is "substantial" under representation of women in any industry. Contracting Officers may make the determination what industries are "substantially underrepresented until the SBA administrator makes this determination and releases the report.

* The bill authorizes the establishment of Women Business Centers and affords them operating budgets as well as grants to further the development of women-owned businesses.

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Other areas -

* "Volunteers" under the Service Corps are to be paid as GS-11's. (Whenever I've volunteered for any organization I never got paid....

* The bill establishes Small Business Institutes of learning (no wonder Hank doesn't like the bill). The SBA receives funding to establish these institutes in public and private institutions.

* The bill provides 10 million dollars in grants for match making and expanding business to business relationships.

* Disagreements between the SBA and a Contracting officer which can not be resolved by the head of the agency are to be resolved by the Office of Management and Budget.

* The bill establishes subcontract goals for all subcategories of small business, i.e. women-owned small business, veteran-owned, 8(a), HUBZone, etc.

* OFPP is to resolve any goaling issues between an agency and SBA.

* FPDS is to expand collection of data to include GWAC's, GSA Schedule, and IDIQ contracts.

Ralph these are only highlights. This bill is extensive and really deserves an analysis against the current law. I just don't have the time to do that extensive an analysis.

Those portions of the bill dealing with SBA Loans except as they relate to the 8(a) program were not reviewed.

Title II -- Small Business Act Amendments and related provisions

Sec 2. Findings; Statements of Policy

(d) Use of Assistance programs to Establish, Preserve, and Strengthen Small Business Concerns - (2) section 8(a) acknowledges that "productive capital is concentrated."

(F) that the procurement authority under section 8(a) shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

The purpose for the 8(a) program has been clarified to be a business development program
- not a procurement instrument.

(g) Assistance to Women-owned business -

Language strengthened on the fact that women have experienced discrimination and that there are barriers to women because of the discrimination. This language is very strong - stronger than for small disadvantaged businesses. In fact there is a requirement for the SBA to "remove" discrimination for women hoping to gain capital.

Sec. 3 Definitions -

Definition of bundled is confusing. Language needs to be rewritten. However separate smaller contract has been added. In addition not only is bundling of requirements including contracts previously performed by small business, suitable for small business has been added.

H.R.2607

Title: To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

Sponsor: Rep Case, Ed [HI-2] (introduced 6/26/2003) **Cosponsors:** 3

Latest Major Action: 6/26/2003 Referred to House committee. Status: Referred to the House Committee on Small Business.

Small Business Federal Contractor Safeguard Act (Introduced in House)