

109TH CONGRESS
1ST SESSION

H. R. 4474

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. BARROW (for himself, Ms. VELÁZQUEZ, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DAVIS of Alabama, Mr. CLAY, Mr. SCOTT of Georgia, Mrs. CHRISTENSEN, Mrs. JONES of Ohio, Mr. OWENS, Mr. GRIJALVA, Ms. BORDALLO, Mr. TOWNS, Mr. WYNN, Ms. KILPATRICK of Michigan, Mr. MEEKS of New York, Mr. CONYERS, Ms. MILLENDER-MCDONALD, Mr. CASE, Mr. DAVIS of Illinois, Ms. CORRINE BROWN of Florida, Ms. JACKSON-LEE of Texas, Mr. FORD, Mr. CUMMINGS, Mr. LEWIS of Georgia, Mr. AL GREEN of Texas, Mr. BUTTERFIELD, Mr. UDALL of New Mexico, Ms. LEE, Ms. BEAN, Mr. MICHAUD, Mr. LIPINSKI, Ms. MCKINNEY, and Ms. LINDA T. SÁNCHEZ of California) 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 2005”.

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

Sec. 1. Short title; table of contents.
 Sec. 2. Findings.

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. 1. Purpose.
 Sec. 2. Retention of status after completion of 8(a) program.
 Sec. 3. Restricted competition for small businesses owned and controlled by so-
 cially and economically disadvantaged individuals.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Minority-owned businesses play a vital role
 6 in shaping the Nation's economy, having an impact
 7 in communities across the country, generating
 8 \$700,000,000 in revenue, and employing nearly
 9 5,000,000 people.

10 (2) Businesses owned by minorities have a
 11 rapid growth rate, as much as 8.5 percent annually,
 12 which is three times higher than the average for
 13 United States firms, and minority owned firms rep-
 14 resent 15 percent of all United States businesses.

15 (3) Despite the phenomenal growth of minority
 16 entrepreneurship, it lags behind mainstream busi-
 17 nesses, facing numerous barriers and obstacles.

1 (4) While the purchasing power of the Federal
2 Government is an effective way to expand entrepre-
3 neurship, minority business owners continue to have
4 limited opportunities to break into the Federal mar-
5 ketplace, largely due to several factors including a
6 lack of credit, denial of contracts, and unequal treat-
7 ment by large contractors.

8 (5) The section 8(a) program of the Small
9 Business Administration acts as an important cata-
10 lyst for helping minority entrepreneurs overcome
11 these barriers and aiding in their overall growth and
12 development.

13 (6) From its inception, the program has been
14 responsible for the growth of more than 20,000 com-
15 panies in every State across the Nation, including
16 the District of Columbia, Puerto Rico and the Virgin
17 Islands, which have received over \$100 billion in
18 government contracts and are currently employing
19 more than 200,000 people.

20 (7) In the nearly 20 years since the last com-
21 prehensive modernization of the 8(a) program, the
22 Federal marketplace has changed significantly.

23 (8) The changes in the buying strategies of
24 Federal agencies have cost minority entrepreneurs
25 billions of dollars in lost contracting opportunities,

1 and last year alone the section 8(a) program suf-
2 fered a record loss of \$2,400,000,000, a drop of one-
3 fifth in the program level leaving a significant num-
4 ber of minority business owners locked out of the
5 Federal marketplace.

6 (9) The section 8(a) program, which bridges the
7 entrepreneurial divide, is important to minority busi-
8 ness development, and to operate at its fullest poten-
9 tial, it must be supported by agency heads, modern-
10 ized by Congress on a regular basis, and adequately
11 funded.

12 **TITLE I—PRE-8(a) PHASE**

13 **SEC. 101. PURPOSE.**

14 The purpose of this title is as follows:

15 (1) To establish a developmental training initia-
16 tive to provide small business concerns with the
17 technical assistance necessary to navigate the Fed-
18 eral marketplace.

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

22 **SEC. 102. TECHNICAL ASSISTANCE PROGRAM.**

23 (a) ESTABLISHMENT.—The Administrator of the
24 Small Business Administration shall establish a program
25 to be know as the “Pre-8(a) Program” (in this section

1 referred to as the “Program”) to provide technical assist-
2 ance to small business concerns with respect to the receipt
3 and performance of Federal procurement contracts.

4 (b) ELIGIBILITY.—

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

8 (A) be owned and controlled by one or
9 more socially and economically disadvantaged
10 individual; and

11 (B) have a net worth that does not exceed
12 the maximum level specified pursuant to sub-
13 section (g).

14 (2) APPLICATION.—To participate in the Pro-
15 gram under this section, a small business concern
16 shall submit an application describing the ownership,
17 control, and social and economic disadvantage of the
18 small business concern.

19 (3) NONAPPLICABILITY OF OTHER FACTORS.—

20 In approving a small business concern for participa-
21 tion in the Program, the Administrator shall not
22 consider the following factors:

23 (A) The length of time for which the small
24 business concern has been in business in its pri-
25 mary industry classification.

1 (B) The prospects for success of the small
2 business concern in competing in the private
3 sector.

4 (C) The access to credit and capital of the
5 small business concern.

6 (D) The technical and managerial experi-
7 ence of the managers of the small business con-
8 cern.

9 (E) The operating history of the small
10 business concern.

11 (F) The demonstrated technical knowledge
12 of the small business concern.

13 (G) The record of performance on Federal
14 and private sector contracts of the small busi-
15 ness concern.

16 (H) The financial history of the small busi-
17 ness concern.

18 (I) Any outside employment of the owner
19 of the small business concern.

20 (c) NEEDS ASSESSMENT.—

21 (1) ASSESSMENT REQUIRED.—Not less than
22 once every two years, the Administrator shall con-
23 duct a needs assessment of each small business con-
24 cern participating in the Program under this section.

25 Such needs assessment shall include the following:

1 (A) An assessment of the training and
2 skills of the owner of the small business concern
3 (including business management training, mar-
4 keting, accounting, bookkeeping, and Federal
5 contracting).

6 (B) A determination of the likelihood that
7 the small business concern will receive Federal
8 prime contracts in its primary industry or in
9 associated industry areas through technical as-
10 sistance and development provided through the
11 Program.

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

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

1 (e) AGREEMENT FOR FACILITATION OF TRAINING.—

2 In order to facilitate the provision of technical assistance
3 under the Program, the Administrator shall enter into an
4 agreement with the Secretary of Defense regarding the
5 use of Procurement Technical Assistance Centers. The
6 Administrator may enter into such other agreements with
7 other providers of technical assistance as the Adminis-
8 trator finds appropriate.

9 (f) COMPLETION OF PROGRAM PARTICIPATION.—A

10 small business concern shall have completed the Program
11 if the Administrator determines that it is financially sound
12 and has successfully performed a Federal contract.

13 (g) NET WORTH REQUIREMENTS.—

14 (1) ESTABLISHMENT OF MAXIMUM LEVELS.—

15 Not later than 180 days, the Administrator shall es-
16 tablish, for each industry classification, a maximum
17 level of net worth for a small business entering the
18 Program. In establishing such maximum levels, the
19 Administrator shall take into consideration the cap-
20 ital needs of each industry.

21 (2) TREATMENT OF REAL ESTATE.—In deter-

22 mining the net worth of a small business concern for
23 purposes of this subsection, the Administrator shall
24 not include the value of any real estate owned by the
25 owner of the small business concern.

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

6 **TITLE II—MODIFICATIONS TO** 7 **8(a) PROGRAM**

8 **SEC. 201. PURPOSE.**

9 The purpose of this title is as follows:

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

14 (2) To enhance the section 8(a) program to ac-
15 curately reflect the dynamics of the modern procure-
16 ment system so as to better equip minority small
17 businesses to obtain contracts.

18 **SEC. 202. ADMINISTRATION OF SECTION 8(A) PROGRAM.**

19 (a) MODIFICATIONS TO 8(A) PROGRAM.—Notwith-
20 standing any provision of the Small Business Act (15
21 U.S.C. 631 et seq.), the Administrator shall administer
22 the program under section 8(a) of such Act with the fol-
23 lowing modifications:

24 (1) PROGRAM PARTICIPATION REQUIREMENT.—

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

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

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

16 (3) ECONOMIC DISADVANTAGE.—

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

1 (B) DETERMINATION FOR TERM OF PRO-
2 GRAM.—For the purpose of this section, an in-
3 dividual who has been determined by the Ad-
4 ministrator to be economically disadvantaged at
5 the time of program entry shall be deemed to
6 be economically disadvantaged for the term of
7 the program.

8 (C) PERSONAL NET WORTH.—In deter-
9 mining personal net worth for the purpose of
10 program entry, the Administrator shall exclude
11 from such determination the following:

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

20 (ii) The equity of a disadvantaged
21 owner in a primary personal residence.

22 (D) MAXIMUM NET WORTH.—The Admin-
23 istrator shall not establish a maximum net
24 worth that prohibits program entry of less than
25 \$750,000.

1 (b) MODIFICATIONS TO DEVELOPMENTAL PHASE.—

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

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

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

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

17 (c) MODIFICATIONS TO TRANSITIONAL PHASE.—

18 (1) REDUCTION OF SOLE SOURCE CON-
19 TRACTS.—In each year of the transitional phase, a
20 small business concern participating in such pro-
21 gram shall—

22 (A) reduce by 25 percent the aggregate
23 value of the contracts it performs that are
24 awarded using procedures other than competi-
25 tive procedures; and

1 (B) increase the aggregate value of the
2 contracts (awarded under this section or other-
3 wise) it performs that are awarded using com-
4 petitive procedures.

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

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

14 (B) is assigned an industrial classification
15 code other than a code for manufacturing and
16 is valued at not more than \$6,000,0000.

17 (d) EFFECTIVE DATE FOR MODIFICATIONS TO THE
18 8(A) PROGRAM.—

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

23 (2) TRANSITIONAL RULE.—A small business
24 concern participating in the program under section

1 8(a) of the Small Business Act (15 U.S.C. 637(a))
2 may participate for not more than ten years.

3 **TITLE III—POST-8(a)**
4 **ASSISTANCE**

5 **SEC. 1. PURPOSE.**

6 The purpose of this title is as follows:

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

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

15 (3) To increase minority business representa-
16 tion in the Federal marketplace.

17 **SEC. 2. RETENTION OF STATUS AFTER COMPLETION OF**
18 **8(A) PROGRAM.**

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

1 **SEC. 3. 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.

○