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**15 USC Sec. 657a**

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-EXPCITE-

TITLE 15 - COMMERCE AND TRADE

CHAPTER 14A - AID TO SMALL BUSINESS

-HEAD-

Sec. 657a. HUBZone program

-STATUTE-

(a) In general

There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

(b) Eligible contracts

(1) Definitions

In this subsection -

(A) the term "contracting officer" has the meaning given that term in section 423(f)(5) of title 41; and

(B) the term "full and open competition" has the meaning

given that term in section 403 of title 41.

(2) Authority of contracting officer

Notwithstanding any other provision of law -

(A) a contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if -

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed -

(I) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) \$3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price;

(B) a contract opportunity shall be awarded pursuant to this

section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price; and

(C) not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

(3) Price evaluation preference in full and open competitions

(A) In general

Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business

concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) Procurement of commodities

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be -

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

(C) Procurement of commodities for international food aid

export operations

The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered

by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) Treatment of preference

A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(4) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

(c) Enforcement; penalties

(1) Verification of eligibility

In carrying out this section, the Administrator shall establish procedures relating to -

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section

(including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title.

(2) Examinations

The procedures established under paragraph (1) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 632(p)(5) of this title.

(3) Provision of data

Upon the request of the Administrator, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(4) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a "HUBZone small business concern" for purposes of this section, shall be subject to -

(A) section 1001 of title 18; and

(B) sections 3729 through 3733 of title 31.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out the program established by this section \$10,000,000 for each of fiscal years 2004 through 2006.

-SOURCE-

(Pub. L. 85-536, Sec. 2[31], as added Pub. L. 105-135, title VI, Sec. 602(b)(1)(B), Dec. 2, 1997, 111 Stat. 2629; amended Pub. L. 106-554, Sec. 1(a)(9) [title V, Sec. 503(b), title VI, Sec. 612(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695, 2763A-699; Pub. L. 108-447, div. K, title I, Secs. 153, 154, Dec. 8, 2004, 118 Stat. 3458.)

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REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, referred to in subsec. (b)(4), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is

classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

-MISC1-

#### PRIOR PROVISIONS

A prior section 2[31] of Pub. L. 85-536 was renumbered section 2[44] and is set out as a note under section 631 of this title.

#### AMENDMENTS

2004 - Subsec. (b)(3)(C), (D). Pub. L. 108-447, Sec. 153, which directed amendment of par. (3) by redesignating subpar. (C) as (D) and adding a new subpar. (C) at the end, was executed by making the redesignation as directed but by adding the new subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108-447, Sec. 154, substituted "2004 through 2006" for "2001 through 2003".

2000 - Subsec. (b)(3). Pub. L. 106-554, Sec. 1(a)(9) [title VI, Sec. 612(a)], designated existing provisions as subpar. (A), inserted heading, substituted "Subject to subparagraph (B), in any" for "In any", and added subpars. (B) and (C).

Subsec. (d). Pub. L. 106-554, Sec. 1(a)(9) [title V, Sec. 503(b)], added subsec. (d).

#### EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105-135,



set out as an Effective Date of 1997 Amendment note under section 631 of this title.

#### INITIAL LIMITED APPLICABILITY

Pub. L. 105-135, title VI, Sec. 602(b)(2), Dec. 2, 1997, 111 Stat. 2631, as amended by Pub. L. 106-113, div. B, Sec. 1000(a)(5) [title II, Sec. 212], Nov. 29, 1999, 113 Stat. 1536, 1501A-295, provided that: "During the period beginning on the date of enactment of this Act [Dec. 2, 1997] and ending on September 30, 2000, section 31 of the Small Business Act [15 U.S.C. 657a] (as added by paragraph (1) of this subsection) shall apply only to procurements by -

"(A) the Department of Defense;

"(B) the Department of Agriculture;

"(C) the Department of Health and Human Services;

"(D) the Department of Transportation;

"(E) the Department of Energy;

"(F) the Department of Housing and Urban Development;

"(G) the Environmental Protection Agency;

"(H) the National Aeronautics and Space Administration;

"(I) the General Services Administration;

"(J) the Department of Veterans Affairs;

"(K) the Department of Commerce;

"(L) the Department of Justice; and

"(M) the Department of State."

#### REPORT

Section 606 of Pub. L. 105-135 provided that: "Not later than March 1, 2002, the Administrator shall submit to the Committees a report on the implementation of the HUBZone program established under section 31 of the Small Business Act [15 U.S.C. 657a] (as added by section 602(b) of this title) and the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p)), as added by section 602(a) of this title)."



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