



# HOW TO GUIDE

to a Corporate Minority Business  
Development Program





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## OVERVIEW

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Minorities represent 34% of the population of the United States, but minority businesses represent only 21% of total businesses, 7% of gross receipts — and 3% of total corporate purchases.

Minority businesses are one of the fastest-growing business segments. They are well-positioned to contribute both to job growth and to the overall economic health of minority communities and the country as a whole.

According to the Bureau of the Census, by the year 2050, the minority population will represent 54% of the total U.S. population.

Corporate minority supplier development programs provide a means for corporations to foster economic growth within the minority business community and to bring more minority entrepreneurs into the mainstream of the American free enterprise system. Minority communities realize increased capital investment and employment opportunities where corporations are successfully implementing minority supplier development programs. In addition, minority communities realize a reduced need for public assistance/ social welfare programs, and an increased tax base.

Corporations also benefit from minority supplier development programs through expansion of their markets, a larger pool of qualified suppliers/ contractors, cost savings and higher quality products and services due to increased competition. Many corporations see a direct correlation between supplier business development and corporate economic development efforts in the communities where they do business. And as customer demographics move to a higher percentage of minorities, corporations comfortable with cultural diversity and change, that are responsive to their customers will thrive. Forward-looking corporations see minority supplier development as a value-added way of doing business and being a good corporate citizen.

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## PREFACE

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The purpose of this Guide is to provide companies with a starting point from which to move forward into the creation of a minority supplier development program that reflects and enhances their corporate culture. This is one of many resources available to the membership of the National Minority Supplier Development Council, Inc.® (NMSDC®) and its affiliated councils. NMSDC providing a direct link between corporate America and minority-owned businesses is the primary objective of the National Minority Supplier Development Council®, one of the country's leading business membership organizations. It was chartered in 1972 to provide increased procurement and business opportunities for minority businesses of all sizes.

The National Minority Supplier Development Council is the global leader in advancing business opportunities for its certified Asian, Black, Hispanic and Native American business enterprises and connecting them to member corporations. NMSDC was chartered in 1972 to provide increased procurement and business opportunities for minority businesses of all sizes.

The NMSDC Network includes a national office in New York and regional councils across the country. There are 1,700 corporate members throughout the network, including most of America's largest publicly-owned, privately-owned and foreign-owned companies, as well as universities, hospitals and other buying institutions. The regional councils certify and match more than 12,000 minority-owned businesses with member corporations that want to purchase their products, services and solutions.

# Minority Supplier Development Program Implementation

## I. INTRODUCTION

The primary elements needed to implement successful corporate minority supplier development programs include:

- Corporate minority supplier development policy statement
- Chief executive officer commitment
- Director of minority supplier development
- Minority supplier development team
- Minority supplier development goals
- Minority supplier development strategies

## II. CORPORATE POLICY STATEMENT

The first element of a corporate minority supplier development program is the establishment of a written minority business development policy statement. A policy statement communicates the corporation's definition of a minority business enterprise, communicates the corporation's intentions concerning minority supplier development, forms the basis for sound operating procedures and is the foundation for decision making.

The policy statement should also state the purpose for the company's minority supplier development efforts and generally how this purpose will be achieved. The following is a model minority supplier development policy statement:

Strengthening the minority supplier community economically contributes to the overall economic growth and expansion of our markets. Therefore, it is our company-wide policy to offer minority businesses an opportunity to compete on an equal basis with all other bidders. In addition, our company will assist in developing and strengthening minority suppliers.

For the purposes of our company policy, a minority business is defined as a company that is at least 51 percent owned, managed and controlled by one

or more minority persons (Asian, Black, Hispanic or Native American).

A more detailed definition is included in Appendix I.

Once established, the policy statement is implemented the same as other corporate policies. Wide dissemination of the policy to employees, suppliers and contractors will ensure awareness and understanding of the corporation's intentions concerning minority supplier development and encourages their support and cooperation in its implementation. As a company-wide policy, minority supplier development should be treated the same as other policies (i.e., included in publications such as the annual report, discussed in staff meetings, and reported on in company newsletters).

### III. CHIEF EXECUTIVE OFFICER COMMITMENT

Minority supplier development programs can succeed only where they have the unqualified endorsement and commitment on the part of the Chief Executive Officer (CEO), and where this endorsement and commitment is effectively communicated company-wide.

The CEO clearly and constantly communicates the benefits of minority supplier development in formal reports, informal communications, speeches and through membership and participation in organizations assisting minority supplier development. Such visible and consistent endorsement conveys to employees the seriousness of the corporation's commitment to the program and enhances the program's credibility.

Like all corporate policies, a minority business development policy must have the backing of the senior line officers if it is to be implemented effectively throughout the organization. Through written and verbal communication, the CEO should emphasize to senior officers that purchasing from minority suppliers is beneficial to the company in many ways.

Some of the benefits include:

- increased opportunities to buy locally, regionally or nationally to ensure a good source of supply;
- better quality products, services, and solutions resulting from competition for the company's business;

- competitive edge when seeking government procurement opportunities that require firms to make every effort to use minority suppliers;
- more personalized service from companies because they are typically smaller and more eager for your business;
- enhanced product loyalty among minority consumers;
- enhanced community relations/positive publicity based on the perception of the company as a good corporate citizen;
- greater flexibility of small businesses, which allows them to adjust more quickly to your business needs.

To ensure that there is a clear understanding of the purposes of minority supplier development and its benefit to the company, the CEO may arrange an educational seminar for senior line officers prior to the announcement of the program implementation. Such a seminar, taught by an expert in the field, enhances knowledge of the senior line officers and promotes ownership and participation in the program.

CEOs are encouraged to participate on the advisory board of NMSDC regional councils as well as promote minority supplier development among their peers.

#### IV. MINORITY SUPPLIER DEVELOPMENT DIRECTOR

The CEO delegates primary responsibility for guiding the company's program to a director of minority supplier development. It is suggested that the director hold a high level management position with the ability to work effectively with all company departments.

The director, with input from an interdepartmental team, prepares a minority business development program that includes goals, strategies, monitoring and a plan for Implementation to be reviewed and approved by the CEO.

Ongoing responsibilities include the following:

- Identify company-wide contracting and purchasing opportunities and ensure that minority businesses have the opportunity to bid competitively;
- Seek minority businesses for sourcing from traditional and non-traditional areas to bid on opportunities in all departments;
- Offer training to managers, buyers and/or other employees regarding minority supplier development;
- Provide informational seminars to minority business owners regarding company requirements and opportunities;
- Participate in minority suppliers development organizations and activities;
- Monitor purchasing and contracting company-wide and report progress to CEO;
- Printed materials regarding the company's commitment to minority supplier development and how the program operates.

A sample position description for a minority supplier development director is provided in Appendix II.

## V. MINORITY SUPPLIER DEVELOPMENT TEAM

A keystone of a successful minority supplier development program is the formation of a company-wide partnership and commitment to minority supplier development. The CEO achieves this not only through his/her visible commitment to the minority supplier development program, but also through the establishment of a corporate minority business development team which has as its purposes:

- Development and implementation of the corporation's minority supplier development program;
- Determination of minority supplier development goals;

- Development of an internal process to identify and communicate purchasing and contracting opportunities;
- Monitoring and keeping the CEO and his/her top management team informed on the implementation status of the program;
- Implementation of actions that resolve problems and enhance implementation of the program;
- Creation of employee incentives in support of minority supplier development, such as including this as an item on the employee's performance appraisal;
- Understanding legislation affecting minority purchasing (please see Appendices III and IV).

The team should consist of middle managers from the corporation's major divisions or departments (i.e., operations, marketing, legal, sales, production, purchasing, finance, etc.). Involvement of these managers on the minority supplier development team not only ensures their commitment to the program but builds a company-wide partnership aimed toward minority supplier development.

## VI. MINORITY BUSINESS DEVELOPMENT GOALS

It is important that corporate minority supplier development goals be established to communicate expectations and to provide a basis against which progress can be measured. Goals provide a means for ensuring that the CEO's expectations of minority supplier development are being fully realized.

Goals are established for the corporation as a whole, for departments and divisions, and for individual managers. Progress toward goals is reported and included in departmental performance reports and in each manager's performance appraisals the same as other corporate goals and objectives.

Goals and objectives can be established in the following terms:

- Performance milestones or in-process review/benchmarks to ensure that adequate bidding opportunities are offered to MBEs;

- Timetable goals reflect whether or not progress is being made in implementing the program;
- Quantitative goals (i.e., annual purchase dollars, percent increase over previous year purchases, percent of total purchase value, etc.) reflect the corporation's use of minority suppliers/contractors.
- Qualitative goals reflect progress in implementing specific minority business development strategies (i.e., mentoring, joint venturing, strategic alliances, education, financial assistance, etc.).
- Mid-process review to ensure MBE participation in bidding opportunities (benchmarking).

Once the goals are established it is important they are monitored and evaluated on a monthly or quarterly basis to ensure that progress is being made, to identify and resolve problem areas, and to recognize and support superior performance.

## VII. MINORITY SUPPLIER DEVELOPMENT STRATEGIES

Minority supplier development strategies may include but are not limited to the following:

- Develop company-wide opportunities;
- Participate in the NMSDC network activities;
- Training/Education;
- Mentoring;
- Networking;
- Financial assistance;
- Innovative development approaches.

## Developing Opportunities

Corporate buyers, contractors and other corporate decision-makers are encouraged to attend minority trade fairs and business opportunity exchanges sponsored by NMSDC® affiliate regional councils to identify and to establish business relationships with minority businesses.

These corporate decision-makers are encouraged to use the NMSDC CENTRAL™ Vendor Management tool and the regional councils to identify certified minority suppliers.

Corporate decision-makers invite groups of minority suppliers to individual procurement conferences to explain their purchasing processes, describe their expectations of suppliers/contractors and to communicate their needs for products, services and solutions. Bringing corporate decision-makers together with minority suppliers opens communications and facilitates the establishment of business relationships. Corporations can use this as an opportunity to truly involve their decision-makers in working with MBEs as done with other suppliers/contractors. Some of these techniques include:

- Divide large contracts into several smaller quantity contracts.
- Identify a contract(s) or portion(s) of a contract to be competitively bid by only minority suppliers.
- Provide adequate quotation lead times, simplify paperwork requirements, and assist in understanding the company's contracting/purchasing process.
- Consider special payment terms and/or advance payments on large purchases to minimize cash flow problems.
- Assist in the purchase of materials and services which corporations may be able to obtain at volume discounts
- Award or renew options on long-term contracts to help ensure steady work flows.
- Consider a bid preference system with factors that impact on economic development such as labor shortage areas;
- Require or encourage other suppliers and contractors to

utilize minority suppliers in their contracts or purchase orders as part of terms and conditions of the bid process.

### **Participation in Regional Minority Supplier Development Councils**

- Regional Minority Supplier Development Councils can provide various types of assistance to corporations interested in increasing their contract awards to minority-owned companies. Following are proactive participation suggestions for MBE directors and other sourcing professionals:
- Provide a copy of all solicitations to the regional council for distribution to MBEs;
- Provide a listing of contracts with expiration dates to the regional council for inclusion on various informational services (telephone hot lines, fax contracting services, newsletters, direct telephone calls);
- Call the regional council to request the names of MBEs to be included when soliciting for small purchases or those that require a quick turnaround;
- Sponsor a “corporate connection” program where MBEs are invited to learn how to do business with your company and receive information about upcoming contracting opportunities;
- Sponsor an “MBE input session” where MBEs are invited to review and comment on an upcoming solicitation and identify bidding obstacles, approximately six months prior to its dissemination;
- Participate on the Board of Directors, task forces or committees as well as serve as events chairperson, emcee, sponsor or host of regional council activities for more visibility and exposure to potential suppliers/contractors;
- Provide the regional council with a listing of contract awards so that MBEs can be made aware of possible subcontracting opportunities and the prime contractor can be made aware of the regional council as a resource;
- Monitor MBE participation and publish results in company newsletters and provide information to regional council for publication.

## Training/Education

Corporations can facilitate minority supplier development by including minority business owners in in-house company management training programs. Examples would include management training in marketing, strategic and tactical planning, financial planning, human resources, quality control, cash-flow management, purchasing, business law, etc.

Corporations can also assist agencies and organizations that support and train minority businesses (i.e., Small Business Associations, Minority Business Development Centers, etc.) by providing training materials, training locations and knowledgeable facilitators.

Corporations can work with local community colleges and other public institutions to provide training to minority suppliers by assisting them in identifying training needs and in developing training programs to address those needs. In addition, corporations can fund training programs being developed for minority suppliers and/or for the minority community as well as include MBEs in training offered to buyers and other professional staff.

## Mentoring

Corporations can establish mentoring relationships with several minority businesses. Mentoring is an excellent way corporations can share their expertise that can be instrumental in allowing a minority business to survive and/or expand its business horizon.

Corporate employees can provide assistance such as business planning, product/service pricing, financial planning, marketing, technical knowledge, plant layout, brochures, bidding process, paperwork simplification and work flows, to share their expertise individually or in teams.

Mentoring assistance can be provided through individual volunteer "consultants," corporate teams of experts in various fields, loaned executives or fully-sponsored full-time experts in various disciplines.

Generally, the mentor and protégé participate in the relationship for a minimum of 12 months.

## Financial Arrangements

Financing is one of the most significant issues facing minority businesses. There is room for financial innovation from corporate organizations in terms of loan guarantees, non-standard sources of capital, grants, donations of services, direct corporate loans, co-sponsorship of commercial loans, etc.

Corporations can also assist minority businesses in obtaining working capital loans through the NMSDC Business Consortium Fund (BCF). This requires the minority business to be certified with a regional council and have a contract with or purchase order from a local or national member corporation. The BCF provides working capital loans at the prime rate. In addition, corporations can work with Specialized Small Business Investment Companies (SSBICs) providing equity capital to minority businesses.

In 1994, the BCF purchased a venture capital firm - an SSBIC licensed by the U.S. Small Business Administration. The company is known as Triad Capital Corporation it provides long-term debt and equity financing.

Corporations can also assist with securing bonding, minimize or consider eliminating bonding requirements or develop alternative methods for compliance through the BCF.

## Networking

Networking facilitates corporate locating of potential suppliers and contractors. Networking includes business opportunity exchanges, trade fairs, conferences, awards banquets, etc., where minority businesses and corporate buyers gather to exchange information and to establish business relationships. Networking should include developing relationships with other internal staff and leveraging internal resources.

## Innovative Development Approaches

There are a number of innovative development approaches that corporations can use to strengthen the minority business community. Following is a brief description of some:

**Spin-offs**—a corporate operating division is divested to a minority supplier and the corporation assists in managing the business for a short period of time before transferring ownership to the minority business owner.

**Acquisition for Transfer to Minority Ownership**—a corporation purchases a business, assists a minority business owner in managing the business for a limited period of time, and then transfers ownership to the minority business owner with favorable payment terms.

**Joint Venture**—a corporation and minority business work together. The corporation may use its financial support and the minority business provides the technical expertise or human resources to manage the new venture. The two continue working together until the venture can be transferred to the minority business person.

**Incubator**—a corporation provides a business location, telephone, secretarial services, etc., at no or a low monthly fee for minority businesses. An incubator is an excellent means for minorities to network and develop the business.

**New Ventures**—minority business and corporate partners identify promising business opportunities and establish an in-depth business. The corporation assists the minority business for a period of time before turning the venture over to the minority business.

**Non-Traditional Purchasing or Sourcing**—a corporation seeks areas within the company that may have low or no minority participation (i.e., accounting, legal, professional consulting, financial management) and pursues proactive methods of inclusion.

**Second Tier Purchasing/Contracting**—a corporation strongly encourages or requires its primary suppliers to develop a minority supplier development program and award a percentage of its subcontracting opportunities to minority businesses.

**Technical Assistance**—a corporation provides assistance and/or training to the minority business, accelerating in a particular area(s) to increase competitiveness and the ability to bid more effectively for the corporation's business.

**MBE Advisory Committee**—a corporation identifies MBEs to serve on a committee both within the corporation, and externally, to monitor their minority business development activities. The sole purpose of this committee is to ensure that the corporation is sharing and awarding contracting opportunities to minority suppliers.

**Strategic Alliances**—a corporation and a minority supplier team up on one or more projects to enhance the capabilities of each to win a contract, ser-

vice/manage a contract or develop a product/service. The strategic alliance produces a stronger, more effective temporary or part-time partnership that is mutually beneficial.

**Outsourcing**—a corporation identifies a function(s) not directly related to their core business and contracts the responsibility of that division or support service to a minority-owned company. The transaction may include a contract with the corporation to assist with the first year(s) of operation. Common outsourcing examples are human resources services, temporary employment services, cafeteria management, print shop and mail room.

## VIII. CONCLUSION

In summary, effective and successful minority supplier development programs work in conjunction with the ongoing process to buy and source suppliers and contractors within a corporation. Such programs contain the following elements:

- A corporate minority supplier development policy statement.
- Commitment on the part of the chief executive officer and his/her senior officers.
- A minority supplier development director specifically assigned the responsibility for implementing the program.
- Minority supplier development goals that are established and monitored the same as other corporate goals and objectives.
- A corporate culture which promotes innovative techniques to develop minority suppliers.

The program and strategies described in this publication are orderly and progressive. It is important that any effort which is directed at both business and economic development goals be grounded in firm, sound management practice.

To undertake a minority supplier development program without making it a part of the day-to-day business of the organization is to condemn it to almost certain failure. But by careful planning, policy formation, goal setting, implementation, monitoring and accountability, the program can reach its goals and produce significant benefits for the corporation and the community.

## IX. APPENDICES

- Definition of minority-owned business
- Sample position description for a minority business development director
- Legislation affecting minority purchasing
- Key legal terms and definitions
- List of NMSDC affiliate regional councils

### APPENDIX I Definition of Minority-Owned Business

The National Minority Supplier Development Council has standardized procedures to assure consistent and identical review and certification of minority-owned businesses. These businesses are certified by NMSDC's affiliate nearest to the company's headquarters.

A minority-owned business is a for-profit enterprise, regardless of size, physically located in the United States or its trust territories, which is owned, operated and controlled by minority group members.

"Minority group members" are United States citizens who are Asian, Black, Hispanic and Native American. For the purposes of this definition, a minority person is a Black American, Hispanic-American, Native American or Asian-American. The term "Native American" includes American Indians, American Eskimos, American Aleuts, and Native Hawaiians. The term "Asian Pacific American" includes United States citizens whose origins are from Japan,

China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S Trust territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan. The term "Asian Indian American" includes United States citizens whose origins are India, Pakistan and Bangladesh.

Ownership by minority individuals means the business is at least 51 percent owned by such individuals or, in the case of a publicly-owned business, at least 51 percent of the stock is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members.

## APPENDIX II

### Minority Supplier Development Director

#### POSITION DESCRIPTION

**Goal:** Design, develop and implement corporate-wide programs to increase company involvement in the economic development of minority businesses. Administer programs for the procurement area and all user departments throughout the company to promote procurement activity with minority-owned businesses.

**Major Duties:** Design, develop, implement and administer corporate-wide programs to ensure equal opportunity and develop affirmative procurement in the company's daily procurement activities for minority-owned businesses.

Negotiate attainable MBE utilization goals for all company departments. Ensure a consistent standard of measurement regarding the progress of the MBE program. Report progress regularly to senior executive and/or CEO.

Design, develop, disseminate and maintain a directory of minority suppliers/contractors by commodity as well as a resource library of other published reference materials.

Identify additional commodities and services that can be supplied by minority businesses; administer a regular follow-up program; establish a minority business classification system, verification and reporting system.

Interface with all departments to assist and develop areas having potential to increase procurement activity with minority businesses.

Serve as the initial contact person for MBEs interested in information on doing business with the company.

Develop, implement and conduct training programs for procurement area and all user department personnel as well as vendor/buyer workshops.

Study, recommend, implement and administer changes to corporate procurement procedures and policies which affect minority business participation.

Review federal, state and local government legislation and programs and advise management of their impact on the company.

Maintain records and develop reports to disseminate on a regular basis to all procurement areas disclosing program results.

### APPENDIX III

#### Legislation Affecting Minority Purchasing

**1965**—Executive Order 11246 (E.O. 11246) prohibits federal contractors and subcontractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The EO also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. [Lyndon B. Johnson]

The E.O. 11246 is administered by the Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor.

**1968**—The Small Business Administration's 8(a) program was established to enhance federal purchases from socially or economically disadvantaged owners of small businesses.

**1969**—Executive Order 11485 established the U.S. Office of Minority Business Enterprise within the Department of Commerce with the purpose of mobilizing federal resources to aid minorities in business.

**1970**—Executive Order 11518 – Providing for the increased representation of the interests of small business concerns before departments and agencies of the United States Government. March 20, 1970 – Richard M. Nixon

**1971**—Executive Order 11625 - President Nixon issued Executive Order 11625 on October 13, 1971 authorizing the Secretary of Commerce to coordinate plans, programs and operations of the Federal government which would affect Minority Business Enterprises (MBE). Heads of Federal agencies are to furnish information, assistance and reports on MBE activity as requested by the Secretary of Commerce as well as develop and implement systematic data collection processes which will provide the Office of Minority Business Enterprise Information Center current data helpful to evaluating and promoting MBE efforts.

**1971**—Title 41, Federal Procurement Regulations required all federal contracts exceeding \$500,000 to contain a clause encouraging contractors to utilize minority businesses as subcontractors on a best-effort basis.

**1971**—Expanded upon Executive Order 11485 and Executive Order 11625 gave the Secretary of Commerce the authority to: (1) implement federal policy in support of minority business enterprise programs; (2) provide technical and management assistance to disadvantaged businesses; and (3) coordinate activities between all federal departments to aid in increasing minority business development.

**1977**—The Public Works Employment Act as amended by Congressman Parren J. Mitchell required that ten percent of each Federal Construction Grant be awarded to minority businesses.

**1977**—Public Law 95-89 increased loan authorizations and surety bond guarantee authority to minority businesses.

**1977**—The Railroad Revitalization and Regulatory Reform Act required that recipients of financial grants and their subcontractors establish a goal of 15 percent of purchases to be awarded to minority businesses.

**1978**—Public Law 95-507 mandates that bidders for federal contracts in excess of \$500,000 for goods and services and \$1,000,000 for construction, submit prior to contract award, a plan which includes percentage goals for the utilization of minority businesses. This law also contained several amendments to the Small Business and Small Business Investment Act of 1958.

**1979**—Executive Order 12138 – Creating a National Women's Business Enterprise Policy and prescribing arrangements for developing, coordinating and implementing a national program for women's business enterprise. The Order directs each Federal agency to take appropriate action to facili-

tate, preserve and strengthen women's business enterprise by ensuring their participation in all business related activities including procurement. The head of each agency is to designate a high level official to have responsibility for the participation and cooperation of that agency in carrying out the Order. [President Jimmy Carter]

**1982**—Section 105(f) of the Surface Transportation Assistance Act is the ten percent set-aside amendment sponsored by Chairman Parren Mitchell of the House Small Business Committee. This set-aside provision mandates that not less than ten percent of all funds appropriated over the four-year period (1982-1986) shall be expended with small businesses that are owned and controlled by socially and economically disadvantaged individuals.

**1983**—Executive Order 12432 signed by President Reagan, directs all agencies of the federal government to develop specific goal-oriented plans for expanding procurement opportunities to minority businesses.

**1985**—H.R. 1961—Criminal Penalties for Front Companies was introduced by Congressman Mitchell to address some of the concerns of those who allege that front companies are injuring minority business programs.

Under H.R. 1961, any false statement knowingly made to any party for the purpose of obtaining an 8(a) contract, a small business set-aside, a subcontract awarded under Section 8(d) subcontracting plan, or a contract awarded under the ten percent set-aside of the Surface Transportation Assistance Act of 1982, would be a crime punishable by a fine and/or a jail term of five years.

**1986**—Public Law 99-661 is a precedent-setting bill requiring affirmative efforts by all government contractors towards a three-year goal of five percent minority (disadvantaged) business participation in Department of Defense procurement. It provides that: "To the extent practicable", each contractor demonstrate full compliance with the (1) intent of the legislation. Contractors may pay no more than fair market price (FMP), which may exceed ten (2) percent of the market price. Contractors may be criminally prosecuted for acts of misrepresentation. (3) Contractors must report utilization for all separate groups that make up the protected (4) class of minorities.

**1988**—Public Law 100-656 - amends the SBA Act for the purpose of reforming the Capital Ownership Development (Section 8(a) Program).

This legislation basically tightened the requirements of the 8(a) program to among other things, reduce the time it took to enter the program, established time frames for staying in the program and established requirements for GAO program reviews and periodic SBA reviews of 8(a) certified firms. The law established civil penalties in response to documented cases of kickbacks, misrepresentation of minority status and manipulation of the program by majority controlled firms participating in the 8(a) program. P.L. 100-656 refocused the intent of the program as one of making small and disadvantaged firms more competitive in the marketplace as opposed to merely one of facilitating the award of contracts. nt.

The law also set \$5 million and \$3 million as thresholds for competitive 8(a) grants, established a requirement that agencies publicize to the small business community their annual contracting forecasts and set government wide contracting goals of 20% for small business (increased to 23% by the SBA Reauthorization Act of 1999) and 5% for small disadvantaged business.

**1989**—California General Order 156 reaches farther than any state or local MBE initiative ever conceived. The General Order calls for the setting of goals, establishment of viable program initiatives, verification of racial or gender ownership status of suppliers and the adoption of a formal complaint procedure. This results in the California Public Utility Commission having the potential for withholding action on utility rate cases brought before it, where the affected utilities have not complied with the General Order.

**1992**—Public Law 101-510 [sec. 831] – The Department of Defense (DdD) – Pilot Mentor-Protégé program established. This program encourages assistance to small disadvantaged businesses by providing special incentives to companies approved as mentors. The Government reimburses the mentor for the cost of assistance to its protégé, or, as an alternative, it allows the mentor credit (a multiple of the dollars in assistance) toward its subcontracting goals. The programs managed by the Office of Small and Disadvantaged Business Utilization at the Pentagon in Washington.

Prior to receiving reimbursement or credit, mentors must submit formal applications, including the names of proposed protégés. [revised October 25, 2010]

**1994**—Federal Acquisition Streamlining Act (FASA)  
The FASA repeals or substantially modifies more than 225 provisions of law to reduce paperwork burdens, facilitate the acquisition of commercial

products, enhances the use of simplified procedures for small purchases and introduces an initiative for doing procurement through electronic data interchange. Specific references to small businesses include:

An increased thresholds for small business set-asides. All Federal purchases greater than \$2,500 but not greater than \$100,000 will be reserved for small businesses, unless the contracting officer is unable to obtain offers from two or more capable small firms.

A new 5% government wide procurement goal is established for women-owned businesses.

The authorization to create a government-wide initiative to give civilian agencies authority to set-aside certain contracts for small disadvantaged businesses (SDB) or to apply a 10% price evaluation for SDBs in unrestricted procuremeCreation of a "Small Business Advisory Council", composed of representatives from Federal agencies to give high level attention and focus to small business procurement issues.

**1994**—Executive Order 12928 - President Clinton signed Executive Order 12928 on September 16, 1994 promoting procurement with small businesses owned and controlled by socially and economically disadvantaged individuals, Historically Black Colleges and Universities (HBCU) and Minority Institutions (MI). Federal agencies are to assist these entities to develop viable, self sustaining businesses capable of competing on an equal basis in the mainstream of the economy. The Executive Order establishes a contracting goal of 5% for these entities but mainly reaffirms existing laws, Executive Orders and regulations relevant to minority participation while chastising some Federal agencies for not aggressively supporting them. The Order devotes an entire Section to OSDBU, reaffirming the legal requirement that it report to the Secretary or Deputy and that agencies comply with OFPP letter No. 79-1 which provides guidance on Sec 15k of the SBA Act and the organizational placement and functions of the OSDBU.

**1995**—Adarand Constructors, Inc. v Pena – Adarand Constructors, a low-bidding subcontractor denied a contract on a federal highway project, sued the Secretary of Transportation, alleging that the federal governments incentives to hire minority subcontractors denied him equal protection of the laws. Citation. 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158, 1995 U.S.

**1997**—Public Law 105-135 - Small Business Reauthorization Act of 1997 [Title VII] To foster enhanced entrepreneurship among eligible veterans by

providing increased opportunities

**1999**—Public Law 106-50 – the Veterans Entrepreneurship and Small Business Development Act of 1999, amended the Small Business Act by adding Small Businesses owned and controlled by service-disabled veterans to the categories of small businesses for which the federal agencies develop prime contract goals. Federal agencies also establish goals and collect data regarding subcontracts awarded by prime contractors to veteran-owned small businesses.

Small businesses owned by service-disabled veterans are small businesses that are at least 51 percent owned and controlled by one or more service-disabled veterans or in the case of a veteran with permanent or severe disability, the spouse or permanent caregiver of such veteran. P.L. 106.50 established a 3% goal for government contracting with businesses owned by service disabled veterans. No specific goal is identified for sub contracting with businesses owned by veterans.

**2000**—Public Law 106-554 [sec. 811] – Procurement program for women-owned small business concerns.

**2012 Bill No. 53**—Existing law requires each admitted insurer to provide information to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California. This bill would require that each admitted insurer with premiums written equal to or in excess of \$100,000,000 submit to the commissioner, by July 1, 2013, a report on its minority, women, and disabled veteran-owned business procurement efforts, as specified. The bill would provide that the failure to file the report by July 1, 2013, subjects the admitted insurer to civil penalties to be fixed and enforced by the commissioner, as provided. The bill would require, among other things, that commencing July 1, 2015, each eligible admitted insurer biennially update its supplier diversity report and submit a new report, containing additional elements, to the commissioner no later than July 1. The bill would require that, by July 31, 2013, the commissioner establish and maintain a link on the department's Internet Web site that provides public access to the contents of each admitted insurer's report on minority, women, and disabled veteran-owned business procurement efforts. The bill would provide that these provisions shall remain in effect only until January 1, 2019.

## APPENDIX IV

### Key Legal Terms and Definitions

**Ownership**—For a sole proprietorship or partnership to be deemed a minority business enterprise, at least 51 percent of the company's assets or interests must be owned by a minority person. For a "corporation" to be considered a minority business enterprise, legal and equitable ownership of at least 51 percent of all classes of stocks, bonds and other securities issued by the corporation must be owned by a minority person or minority persons. Any ownership interest held by a minority person which is subject to an option or security interest held by a non-minority person or business entity affecting the incidence of operation and control of shares in the profits of the enterprise shall not qualify as being an interest held by such minority persons.

**Control**—This term requires that the primary power, direct or indirect, to influence the day-to-day management of a business enterprise shall rest with minority persons.

In addition, this term is construed to mean that the business enterprise is not subject to any formal restrictions such as lease, by-laws, corporate charter or loan agreement, which would limit the customary discretion of the minority owner.

**Operated**—Means being involved in the day-to-day company decisions concerning the business operations in an active and internal capacity of the business' performance.

**Small Business Administration**—A federal agency whose primary role is the administrative regulating body and advocate of small business. In recent years, Congress has re-emphasized the advocacy function of SBA to bring about visible, substantive changes in public policy toward small businesses and to champion more effectively their cause. SBA's goal is to help small businesses survive in an economic marketplace dominated by super corporations.

**Set-Aside Programs**—A program practice which allows contractors, federal agencies, and some State, County and City governments to limit competition on a portion of certain contracts to qualified small and small disadvantaged businesses only. This assures that these firms will not have to compete with large companies for the same contracts. Because the law requires the Government to buy at competitive prices, however, contracts are set aside only when enough qualified firms are expected to bid to

ensure adequate competition. SBA establishes both size and disadvantage standards which determine a firm's eligibility to bid on set asides. Such size standards are based upon dollar volume of sales, number of employees, or a combination of the two to determine eligibility.

**8(a) Program**—refers to section 8(a) of the Small Business Act, as amended which authorizes federal agencies to contract for goods and services under limited competitions between approved minority vendors to assure their participation in procurement. SBA serves a prime contractor and then subcontracts actual performance of the work to disadvantaged small businesses which have been certified. SBA offers managerial, technical and financial support to the certified participating 8(a) firms. This process is in effect for Federal government internal agencies only, with very limited private sector involvement.

**Minority Business Development Agency**—a unit of the U.S. Department of Commerce which concentrates on formulating programs to assist the startup and expansion of minority-owned companies, both as government and private sector suppliers. Their program services are delivered through Minority Business Development Centers.



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