
Presidential Documents

Title 3—**Executive Order 12928 of September 16, 1994****The President****Promoting Procurement With Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions**

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to enforce rigorously the letter and spirit of public laws that promote increased participation in Federal procurement by Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (SDBs) as described in section 8 of the Small Business Act (15 U.S.C. 637), Historically Black Colleges and Universities (HBCUs) as described in 34 C.F.R. 608.2, and Minority Institutions (MIs) as referred to in sections 1046(3) and 316(b)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1135d-5(3) and 1059c(b)(1), respectively), it is hereby ordered as follows:

Section 1. Policy Statement. It is the policy of the United States Government that all department and agency heads and all Federal employees involved in the procurement of any and all goods and services shall assist SDBs, HBCUs, and MIs, as applicable, to develop viable, self-sustaining businesses capable of competing on an equal basis in the mainstream of the American economy. To that end, all Federal personnel shall commit to the letter and spirit of all laws promoting the participation of SDBs, HBCUs, and MIs in Federal procurement. The laws promote:

(a) the award of contracts to SDBs, HBCUs, and MIs through the Small Business Administration Section 8(a) Program, the Department of Defense Small and Disadvantaged Business Program, other agency programs, and through other specific statutory authority or appropriate means;

(b) the establishment of particular goals for SDBs, HBCUs, or MIs on an agency-by-agency basis and the requirement that prime contractors and other recipients of Federal funds attain similar goals in their procurement; and

(c) the establishment of other mechanisms that ensure that SDBs, HBCUs, and MIs have a fair opportunity to participate in Federal procurement.

Sec. 2. Attainment of Goals. All departments and agencies are required by law to establish participation goals of not less than 5 percent (15 U.S.C. 644(g)) or a greater percentage where otherwise required by law, as further provided in the Office of Federal Procurement Policy Letter No. 91-1 of March 11, 1991. Although the Federal Government has made substantial strides toward meeting established SDB, HBCU, and MI participation goals, certain departments and agencies have from time to time failed to aggressively pursue such goals. Department and agency heads are henceforth directed to execute, implement, and otherwise aggressively strive to fulfill the statutorily-mandated procurement participation goals. In addition, all departments and agencies are encouraged to set reasonable participation goals that exceed statutory requirements, to the extent permitted by law.

Sec. 3. Subcontracting Plans. The Small Business Act, (15 U.S.C. 637(d)) and other related laws require certain prime contractors to maximize the use of SDBs in subcontracting plans and strive to achieve stated goals through prime contractors' subcontracting practices. Department and agency heads are directed to aggressively enforce these prime contractors' obligations to maximize awards of subcontracts to eligible SDBs.

Sec. 4. Office of Small and Disadvantaged Business Utilization (“OSDBU”).

(a) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) establishes in each Federal department and agency an OSDBU and requires that the Director of the OSDBU “be responsible only to, and report directly to, the head of such agency or to the deputy of such head” (15 U.S.C. 644(k)(3)). To the extent not prohibited by law, each department and agency shall ensure that the aforementioned direct reporting requirements are henceforth vigorously enforced.

(b) Because of the importance of the OSDBU function, each department and agency shall also, to the extent not prohibited by law, comply with the Office of Federal Procurement Policy Letter No. 79-1 of March 7, 1979, which provides implementation guidance on section 15k and the organizational placement and functions of the OSDBU.

Sec. 5. Anti-fraud Enforcement. All department and agency heads shall ensure that in enforcing the laws and requirements mentioned in this order, Federal benefits or contracts intended for SDBs, HBCUs, and MIs are not awarded to entities that are not legitimate SDBs, HBCUs, and MIs. Department and agency anti-fraud enforcement, however, shall not diminish agency vigor in achieving the aforementioned participation goals, which exist to promote the development of legitimate SDBs, HBCUs, and MIs. Nothing herein is intended to change self-certification requirements.

Sec. 6. Periodic Reports to the President. The Administrator of the Small Business Administration and the Administrator of the Office of Federal Procurement Policy shall report to the President periodically on the progress of all departments and agencies in complying with the laws and requirements mentioned in this order.

Sec. 7. Independent Agencies. Independent agencies are requested to comply with the provisions of this order.

Sec. 8. This order shall be effective immediately.



THE WHITE HOUSE,
September 16, 1994.