DCCUMENT RESUME

03855 - [B2733971]

[Proposed Minority Enterprise Act of 1977]. September 26, 1977. 6 pp.

Testimony before the House Committee on Small Business: Minority Enterprise and General Oversight Subcommittee; by Richard W. Gutmann, Director, Procurement and Systems Acgtisitions Div.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Procurement and Systems Acquisition Div.
Budget Function: General Government: Other General Government (806).
Organization Concerred: Department of Defense.
Congressional Relevance: House Committee on Small Business: Minority Enterprise and General Oversight Subcommittee.
Authority: Minority Enterprise Act of 1977; H.R. 567 (95th Cong.). Small Business Investment Act of 1958, as amended. 40 U.S.C. 270. et seq. A.S.P.R. 7-104.36.

The proposed Minority Enterprise Act of 1977 (H.R. 567) would expand assistance to minority small business concerns, provide statutory standards for contracting and subcontracting with respect to such concerns, and create a commission on Federal Assistance to Minority Enterprise. Small business concerns owned by the named minority group members would automatically be eligible for the benefits conferred by the bill, whether or not actual social or economic disadvantage could be shown to exist. Since the intent of the bill is to assist those who are unable to compete effectively without special financial assistance, "minority group members" should be eliminated as a separate eligibility category. A review of the Department of Defense (DOD) Minority Business Enterprise Program indicated that prime contractor's programs to award subcontracts to minority enterprises were not as effective as they might be and that more than one-third of the largest DOD contractors are not required to participate in the program. Either the discretion allowed to contracting officers with respect to the insertion of the Minority Business Enterprise Subcontracting Clause should be eliminated from the proposed legislation or contracting officers should be required to document the record whenever the clause is not to be included. (SC)

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United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 1:00 PM
September 26, 1977

STATEMENT OF
R. W. GUTMANN, DIRECTOR

PROCUREMENT AND SYSTEMS ACQUISITION DIVISION ON

H. R. 567 THE MINORITY ENTERPRISE ACT OF 1977

Before the

SUBCOMMITTEE ON MINORITY ENTERPRISE, AND GENERAL

OVERSIGHT, COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before your subcommittee today to present a statement on our views of H.R. 567, the Minority Enterprise Act of 1977. This bill would expand assistance to minority small business concerns, provide statutory standards for contracting and subcontracting with respect to such concerns and create a commission on Federal Assistance to Minority Enterprise.

On April 26, 1977, we provided to the Chairman, House Committee on Small Business a detailed technical analysis of H.R. 567 including suggested revisions, where appropriate.

One fairly significant point in our letter bears repetition. This concerns Section 105(3) of the bill which

would require that at least 25 percent of direct loan funds be used for loans to "minority small business concerns," and section 108(5) which would waive bonding requirements under 40 U.S.C. §§ 270a et seq. for such concerns. While the definition of "minority small business concern" is not based exclusively on specified race or ethnic group characteristics, it appears that small business concerns owned by the named minority group members would automatically be eligible for the benefits conferred by the bill whether or not actual social or economic disadvantage could be shown to exist. Since the findings in section 2 of the bill indicate that its intent is to assist those who are unable to compete effectively without special financial assistance, we suggest that the proposed new subsection 3(b) be amended by eliminating "minority group members" as a separate eligibility category. This can be accomplished by changing section 101 (b) on page 4 of the Act to read as follows:

> "For the purposes of this title, a minority small business concern shall be deemed to be a small business concern that is owned or controlled by socially or economically disadvantaged minority group members or other socially or economically disadvantaged individuals."

If the suggested approach were followed, the practical effect of basing eligibility on the existence of "social or economic disadvantage" would be to promote the objectives of the bill--to assist minority small business concerns--without actually conferring Federal benefits on the basis of

race or ethnic identity per se. Also, the proposed languag- would generally be consistent with the approach adopted in section 301(d) of the Small Business Investment Act of 1958, as amended.

As you know, we performed a review at the request of this subcommittee, on how the Department of Defense Minority Business Enterprise Program (MBE) was working. Our report was issued on February 28, 1977. We found that prime contractor's programs to award subcontracts to minority enterprises were not as effective as they might be and more than one-third of the largest DOD contractors are not required to participate in the program.

We recommended that the Secretary of Defense revise the current contract clause to provide contractors with more specific direction on increasing the involvement of minority firms in subcontracting. To accomplish this we said DOD should:

--Include goals and objectives for prime contractors to achieve in identifying and soliciting minority firms capable of providing the required products and services.

--Define the role of responsible corporate liaison officials, including their duties in program coordination and program implementation.

--Require contractors to record in summary form the number and value of solicitations made to minority businesses as well as awards to such businesses.

We also recommended that the Department:

--Provide for more effective monitoring of the MBE subcontracting program through the development of performance standards to be used in evaluating prime contractors' compliance with the MBE subcontracting program contractual requirements.

--Provide specific guidance to procurement contracting officers to guide them in determining those contractors that should be required to implement an MBE subcontracting program.

On July 5, 1977, the Department of Defense, in response to recommendations made in our report, proposed certain changes to the Minority Business Enterprise (MBE) Subcontracting Clause in the Armed Services Procurement Regulation (ASPR) 7-104.36. While we believe the proposed changes are generally responsive to our first three recommendations, the DOD transmittal letter to us did not have any specific changes with respect to our last two recommendations concerning the need for (a) more effective monitoring of the MBE Subcontracting Program through the development of performance standards to be used in evaluating prime contractors' compliance with the MBE Subcontracting Program contractual requirements and, (b) specific guidance to procurement contracting officers to assist them in determining those contractors that should be required to implement an MBE Subcontracting Program.

We contacted an official in the Office of the Assistant Secretary of Defense, I & L, who stated that visits to contractors by high ranking Department personnel and the setting of goals for awards has effectively responded to our recommendation on development of performance standards. We believe, however, that more should be done and have suggested that the Department of Defense develop specific standards for evaluating a contractor's MBE program for use by the contract administration elements.

We note that your bill deals with our second recommendation discussed above that was not properly implemented by the Department of Defense. We note however, that in the Amendment to Title III of the Federal Property and Administrative Service Act of 1949, Section 311 still would permit contracting officers discretion as to whether or not the MBE subcontracting program clause should be included in contracts over $500,000. In our review, we found that many of the largest DOD prime contractors were excluded from the program even though we have little doubt that they have needs that could be filled by soliciting offers from minority business enterprise.

The revised ASPR, MBE Subcontracting Clause currently being considered by the Department of Defense states that, "The following clause shall be included, in all contracts of $500,000 or more and which, in the opinion of the contracting officer, may offer subcontracting or other procurement opportunities for products and services for minority business enterprises."

This is essentially the same language as previously contained in the clause and leaves the insertion of the clause to the contracting officer's discretion.

We therefore suggest that either the discretion allowed to contracting officers with respect to insertion of the clause be eliminated from your bill or that contracting officers be required to document the record whenever the clause is not to be included in any prime contract over $500,000.

This completes our formal statement, Mr. Chairman. I will be glad to respond to any questions regarding our comments.