

# HOUSE . . . . . No. 2997

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Antonio F. D. Cabral***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to public procurement and inclusive entrepreneurship.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/20/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/26/2023</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>1/26/2023</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/1/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/1/2023</i>

# HOUSE . . . . . No. 2997

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By Representative Cabral of New Bedford, a petition (accompanied by bill, House, No. 2997) of Antonio F. D. Cabral and others relative to public procurement and inclusive entrepreneurship through the development, inclusion, and utilization of certified minority-owned business enterprises. State Administration and Regulatory Oversight.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Third General Court  
(2023-2024)  
\_\_\_\_\_

An Act relative to public procurement and inclusive entrepreneurship.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Subsection (i) of section 16G of chapter 6A of the General Laws, as  
2     appearing in the 2020 Official Edition, is hereby amended by inserting, at the end of the first  
3     paragraph, the following sentence:

4           The annual report shall include an analysis of the share of economic development funds  
5     administered by state agencies, including loans, grants, tax credits, and technical assistance  
6     services, provided to entities certified under federal or state law as a minority-owned business.

7           SECTION 2. Subsection (i) of said section 16G of said chapter 6A, as so appearing, is  
8     hereby further amended by striking out, in the second paragraph, clauses 8 and 9, lines 82-94,  
9     inclusive, and inserting in place thereof the following:

10          (8) a report of patents or products resulting from agency-funded activities;

11          (9) a description of technical assistance that the agency provided; and

12 (10) the share of loans, grants, tax credits, or technical assistance services provided to  
13 entities certified under federal or state law as a minority-owned business.

14 SECTION 3. Subsection (l) of said section 16G of said chapter 6A, as so appearing, is  
15 hereby amended by striking out the second paragraph and inserting in place thereof the following  
16 paragraph:

17 The secretary of housing and economic development, with the assistance of economic  
18 development planning council appointed under this section, shall develop and implement a  
19 written comprehensive economic development policy for the commonwealth and a strategic plan  
20 for implementing the policy. The policy shall set long term goals and measurable benchmarks  
21 which are not limited to a particular gubernatorial administration and shall give consideration to  
22 any impacts the plan may have on businesses employing 10 or fewer people. The strategic plan  
23 shall include any major economic development initiatives and programs of the secretariat and  
24 any agencies subject to this section. The strategic plan shall also include an assessment of racial  
25 and ethnic disparities in employment and business ownership and an analysis of how the  
26 economic development initiatives contained in the plan will contribute to reducing such  
27 disparities. In developing the policy, the council shall review the published economic  
28 development policy and plan in effect at the commencement of the governor's term of office and  
29 may hold public hearings throughout the commonwealth. However, the council shall hold at least  
30 one public hearing on the topic of racial and ethnic disparities in employment and business  
31 ownership in the commonwealth.

32 SECTION 4. Chapter 7 of the General Laws, as so appearing, is hereby amended by  
33 inserting after section 62, the following section:

Section 63. (a) The general court finds and declares that:

(1) It is in the state's interest to encourage competitive business opportunities for all of its people. As anchor institutions, hospitals and higher education institutions are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority-owned business enterprises whenever possible

(2) By providing that each major anchor institution submit to the Office of Supplier Diversity a report explaining the institutions supplier diversity statement and expressing its goals regarding certified minority-owned businesses, and the office placing that information on the office's internet website, that online resource will help facilitate these supplier relationships.

(b) As used in this section, the following words shall have the following meanings, unless a contrary intent is clearly indicated:

"Anchor institution", a licensed hospital or college or university physically located in Massachusetts.

"Certified business enterprise", a state- or federally-designated minority-owned business physically located in the United States.

"Office", means the Office of Supplier Diversity.

"Operating expenses", means operating expenses, excluding physician professional fees, as reflected in the annual financial report submitted to the office.

(c) On or before July 1 of each year, each anchor institution with operating expenses of \$50,000,000 or more, or \$25,000,000 or more when operating as a component of a larger hospital or university system, shall submit an annual report to the office on its minority

enterprise procurement efforts during the previous year. The annual report shall include all of the following:

(1) The anchor institution's supplier diversity policy statement.

(2) The anchor institution's outreach and communications to minority business enterprises, including:

(i) How the anchor institution encourages and seeks out minority business enterprises to become potential suppliers.

(ii) How the anchor institution encourages its employees involved in procurement to seek out minority business enterprises to become potential suppliers.

(iii) How the anchor institution conducts outreach and communication to minority business enterprises.

(iv) How the anchor institution supports organizations that promote or certify minority business enterprises.

(v) Information regarding appropriate contacts at the anchor institution for interested business enterprises.

(vi) The anchor institution's procurements that are made from minority business enterprises with at least a majority of the enterprise's workforce in Massachusetts, with each category aggregated separately, to the extent that information is readily accessible. An anchor institution that is part of a system may report the diversity of its procurement in compliance with this subparagraph from a system level if there are suppliers that provide services or goods to all

units within the system. An anchor institution shall report the diversity of the remainder of its procurement, including the suppliers that do not resource the entire system.

(3) The report may include other relevant information the office or anchor institution deems necessary.

(d) This section shall not be construed to require quotas, set-asides, or preferences in an anchor institution's goods or services.

(e) By July 1, 2021, the office shall establish and maintain a link on the office's internet website that provides public access to the contents of each anchor institution's report on minority business enterprise procurement efforts. The office shall include a statement on the office's internet website that the information contained in the anchor institution's report on minority business enterprises is provided for informational purposes only.

SECTION 5. Chapter 10 of the General Laws, as so appearing, is hereby amended by inserting after section 10B, the following section:

Section 10C. Prior to the state treasurer's deposit of cash reserves to eligible lending and banking institutions, as defined in section 10A of chapter 10 of the general laws, the treasurer shall ensure the division of banks, as defined in section 1 of chapter 167 of the general laws, has collected data required of lending institutions pursuant to section 13A of chapter 167 of the general laws.

SECTION 6. Chapter 167 of the General Laws, as so appearing, is hereby amended by inserting, after section 13, the following section:

Section 13A. (a) The division of banks shall require the collection of small business lending data from all lenders, including online lenders, and small businesses on an annual basis. The division shall also analyze the impacts that lenders, including online lenders, and their practices have on minority borrowers in the Commonwealth.

(b) The division shall promulgate regulations relative to the required collection of small business lending data. Said regulations shall include, but not be limited to the following:

(1) the establishment of a central depository of the collection and analysis of small business lending data, to include, but not be limited to the following: lending and banking institutions' average annual percent rates, default rates, and fees.

(2) procedures for the solicitation and acceptance of reports regarding small businesses' incidents of predatory lending practices.

(3) procedures for assessing the credibility and accuracy of reports of small business lending data from lending institutions.

(c) The division shall file an annual report with the information obtained pursuant to subsections (a) and (b) as well as recommendations for best practices for small business borrower lending with the house and senate clerks and the house and senate chairs of the joint committee on financial services not later than July 1.

SECTION 7. (a) Notwithstanding any general or special law to the contrary, all appointive boards and commissions in the commonwealth established by the Massachusetts general laws, including boards and commissions of a political subdivision of the state, if not otherwise provided by law, shall adopt policies and practices designed to increase the racial and

ethnic diversity of their board membership and commission membership. To meet this goal, said boards and commissions shall report on an annual basis to the secretary of state and the office of the governor the following: (i) data on specific qualifications, skills and experience that the board appointees considers for its board of directors and nominees for the board of directors and commissions; (ii) the self-identified race and ethnicity of each member of said board of directors and commissions; (iii) the number of total individuals on said boards and commissions; iv) a description of the process of said board or commission for identifying, evaluating, and determining nominees and appointees including, but not limited to, how demographic diversity is considered; and (v) a description of the policies and practices of said boards and commissions for promoting diversity, equity and inclusion among said boards and commissions and (vi) the total number of people of color and the total number of individuals who serve as members on all boards and commissions in the commonwealth.

(b) To track and measure progress, an annual report shall be published by the office of the governor, annually, not later than July 1, that provides: (i) demographic data provided by all public board and commission applicants, including boards and commissions of a political subdivision of the state, relative to ethnicity and race; and (ii) demographic data provided by all public board and commission nominees or appointees, including boards and commissions of a political subdivision of the state, relative to ethnicity and race, pursuant to section (a) of this act. Any demographic data disclosed or released pursuant to this section shall be anonymized to the extent practicable and shall not identify an individual applicant, nominee or appointed board member or commissioner. Said demographic data shall also disclose aggregated statistical data by commission or board sector and by secretariat that governs said board or commission, if applicable.



(c) Notwithstanding any general or special law to the contrary, and pursuant to any established appointment procedures of individual boards or commissions in the commonwealth, racial diversity shall be considered in any subsequent appointments made after July 1, 2021, to any public boards and commissions in the commonwealth.

(d) By January 1, 2025, all boards and commissions shall, to the extent feasible, broadly reflect the general public of the commonwealth, including the percentage of racial and ethnic minorities in the general population.

SECTION 8. Sections 4 and 10 shall take effect on July 1, 2025.

SECTION 9. Chapter 149 of the General Laws, as so appearing, is hereby amended by inserting after section 44M, the following section:

44N. (a) For purposes of this section the following phrases shall have the following meanings:

"Underutilized bidder", any minority person or business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "minority business" set forth in section 40N of chapter 7, any business beneficially owned by one or more women as provided in the definition of "women-owned business" set forth in said section 40N, any small business as provided in any micro- - of chapter 23A, and any local business, defined as having its principal office in the geographic area over which the procurement officer has jurisdiction and the owners of more than 50 percent of the business enterprise are residents of the geographic area over which the procurement officer has jurisdiction.

160 "Sheltered market program", a program under which certain contracts are designated by  
161 the chief procurement officer for procurement from one or more classes of underutilized bidders.

162 (b) When authorized by majority vote, a chief procurement officer may establish a  
163 sheltered market program in conformity with the requirements of this section. Such authorization  
164 may apply to a single contract or to any number or types of contracts, shall specify the class or  
165 classes of underutilized bidders to be included in the sheltered market program, and shall to the  
166 extent constitutionally required be based on findings that such program is a remedy for the  
167 present effects of past discrimination.

168 (c) A procurement officer shall not solicit or award a contract pursuant to a sheltered  
169 market program until the chief procurement officer, after notice and a public hearing, has  
170 approved written procedures for the operation of such program, has filed such procedures with  
171 the state office of minority and women business assistance and the secretary of state, and has  
172 published such procedures or a summary thereof in a newspaper of general circulation within the  
173 area served by the governmental body and in any publication established by the secretary of state  
174 for the advertisement of such notices.

175 Such written procedures shall, at a minimum, include:

176 (1) procedures for the certification of underutilized bidders, which procedures shall  
177 require the use of standardized application forms, the submission of applications sworn to under  
178 the penalties of perjury, the maintenance of certification records by the chief procurement officer  
179 or his designee, an opportunity for a business denied certification to be heard on such denial, the  
180 issuance of certificates valid for a period not longer than two years, notice and an opportunity to  
181 be heard prior to revocation of certificates, and a public information campaign to encourage

certification; provided, however, that a governmental body's certification procedures may authorize participation in its sheltered market program by any eligible underutilized bidder duly certified under the sheltered market program of another governmental body or by the state office of minority and women business assistance;

(2) in the event the authorization required by paragraph (b) does not designate the specific contracts to which the sheltered market program applies, procedures for designating such contracts, which procedures shall (i) set forth criteria for designating contracts, (ii) require that each designation be in writing and based on written findings that the contract meets such criteria, and (iii) provide for an administrative review of the appropriateness of including the contract in the sheltered market program;

(3) procedures for ensuring effective competition among underutilized bidders for contracts within the sheltered market program, including procedures requiring (i) supplemental advertising in media serving underutilized communities, (ii) for the procurement of the construction, reconstruction, installation, demolition, maintenance or repair of any building in the amount of one thousand dollars but less than ten thousand dollars, the receipt of written or oral quotations from no fewer than three certified underutilized bidders customarily providing such construction services; provided, however, that a quotation shall not be considered until the bidder has submitted to the procurement officer a copy of a valid certificate, and (iii) for the procurement of the construction, reconstruction, installation, demolition, maintenance or repair of any building in the amount of ten thousand dollars or more, the receipt of responsive bids or proposals from no fewer than three certified underutilized bidders; provided, however, that a bid or proposal shall not be considered unless accompanied by a copy of a valid certificate; and

(4) procedures for review and assessment of the sheltered market program, at least annually, based upon a detailed written report by the chief procurement officer or his designee, which report shall at a minimum set forth for the twelve months then ending (i) the number and dollar value of contracts awarded to underutilized bidders under the sheltered market program, (ii) the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to underutilized bidders eligible for participation in the sheltered market program, (iii) a description of other efforts undertaken by the governmental body to increase its contracting with underutilized bidders, and (iv) recommendations for continuing, modifying, or terminating the program.

A violation of any valid procedure adopted pursuant to this section shall constitute a violation of this chapter.

(d) Advertisements for a contract within the sheltered market program shall state that the contract will be awarded under a sheltered market program and shall specify the class or classes of underutilized bidders to which competition for the contract is limited.

(e) In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis. If fewer than three responsive bids, proposals, or quotations are received, or if all bids, proposals, or quotations are rejected, the contract shall not be awarded under the sheltered market program.

(f) No contract shall be awarded under a sheltered market program for a term exceeding three years, including any renewal, extension, or option. No underutilized bidder shall be awarded a sheltered market program contract if at the time of award such bidder is a party to any other sheltered market program contract the term of which, including any renewal, extension, or

option, has not expired. No underutilized bidder shall be awarded more than three sheltered market program contracts by one or more governmental bodies within any one-year period.

(g) Except as otherwise provided in this section, all procurements under a sheltered market program shall be undertaken in accordance with the provisions of this chapter.

SECTION 10. Section 44A of chapter 149, as so appearing, is hereby amended by inserting after subsection 5, the following subsection:

(6) An awarding authority awarding a contract under this chapter may ensure the prompt payment to any subcontractor with whom the contractor has contracted by implementing a prompt payment program. Any subcontractor that has fully performed in accordance with the terms of the contract is entitled to prompt payment from a contractor under such a program.

(a) If an awarding authority implements a prompt payment program, a contractor shall notify all subcontractors with which it has contracted of the schedule of payments due to it by the awarding authority and the receipt of such payments.

(b) Within 14 days of receipt of a payment from the awarding authority, a contractor shall pay a subcontractor the full or proportional amount received for each such subcontractor's work and material, based on work completed or services provided under the subcontract, unless the contract says otherwise.

(c) A contractor may withhold payment within the 14-day period if a written notice stating the reason for withholding is provided to the subcontractor and the

(d) (1) If a subcontractor does not receive payment within the required period, the subcontractor may give written notice of the nonpayment to the procurement officer, indicating:

247 (i) the name of the contractor;

248 (ii) the project under which the dispute exists;

249 (iii) the amount in dispute;

250 (iv) the itemized description on which the amount in dispute is based.

251 (2) After review of the written notice, the procurement officer may schedule a meeting  
252 with the subcontractor and contractor to evaluate the dispute and determine if the contractor is  
253 wrongfull withholding or refusing payment.

254 (i) If the procurement officer determines that the contractor is wrongfully withholding or  
255 refusing payment, the contractor shall provide payment to the subcontractor within 7 days of the  
256 meeting.

257 (ii) If the contractor further withholds or refuses payment, the procurement officer may  
258 impose a penalty of \$100 per day until the contractor provides payment to a subcontractor.

259 (e) If a contractor fails or refuses to pay a subcontractor within the required period after  
260 the receipt of a payment from the awarding authority, a contractor shall pay, in addition to the  
261 payment amount, interest accrued for each business day beyond the required payment period.

262 (1) Interest will not begin to accrue until the beginning of the business day on from the  
263 awarding authority.

264 (2) procurement officer.

265 SECTION 11. Chapter 149 of the General Laws, as so appearing, is hereby amended by  
266 inserting after section 44A 1/2, the following section:

44A 3/4 (a) A procurement officer may establish, for contracts awarded under subsections 44A(c)-(d) of this chapter, an underutilized business subcontracting program for the purpose of increasing participation of underutilized businesses in the public construction industry. As used beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "minority business" set forth in section 40N of chapter 7, any business beneficially owned by one or more women as provided in the definition of "women owned business" set forth in said section 40N, any small business as provided in the definition of -business as provided in the - any local business, defined as having its principal office in the geographic area over which the procurement officer has jurisdiction and the owners of more than 50 percent of the business enterprise are residents of the geographic area over which the procurement officer has jurisdiction.

(b) In establishing such a program, a procurement officer shall set project-specific participation goals for underutilized subcontractors based on an assessment of the availability of underutilized subcontractors to do the needed work. If a procurement officer implements such a program, the requirement of a good-faith effort to meet these goals shall be included in the evaluation of bidders, along with the requirements and criteria set forth in the invitation for bids. A procurement officer may reject the lowest bid if the bidder does not meet the project participation goals or show good faith efforts to meet the project participation goals outlined in the invitation for bids.

(1) Good-faith efforts, as used in this section, may include: (i) actively soliciting underutilized businesses (ii) engaging in outreach to underutilized businesses in socially and economically disadvantaged communities, (iii) making project plans available to underutilized businesses for pre-bid inspection, (iv) providing bonding assistance to underutilized

subcontractors, and (v) working and developing relationships with trade and community organizations that support underutilized businesses.

(c) When implementing a subcontracting program, a procurement officer may establish a preapprenticeship program to provide relevant training to develop the skills and expertise of underutilized individuals in the construction industry. This pre-apprenticeship program may include (1) training and courses on specific trades within the construction industry, financial literacy, and exposure to apprenticeship programs, (2) support services and community building, and (3) assistance in entering apprenticeship programs.

(d) A procurement officer may set mandatory subcontracting minimums, either on an annual basis or for individual projects estimated to cost over \$50,000. The minimums shall be expressed as a percentage of the total project value rather than as a percentage of the total estimated subcontracting value.

(1) Before adopting mandatory subcontracting minimums, a procurement officer may and hold public hearings to determine the acceptable minimum benchmarks. The following information may be considered when determining the appropriate mandatory subcontracting minimum: (1) current participation of underutilized businesses on city construction projects, (2) availability of underutilized businesses in the relevant geographic area to perform subcontracting work on city construction projects estimated to cost over \$50,000, and (3) barriers that currently exist in the construction industry to exclude underutilized businesses in the relevant geographic area.

(2) An awarding authority of a public construction contract awarded under section 5 of this chapter shall reject any bid that does not demonstrate feasible compliance with the



mandatory subcontracting minimum. A bidder must provide, in its proposal, a detailed plan for engaging with underutilized businesses and for meeting the mandatory subcontracting minimum. An awarding authority shall the mandatory subcontracting minimum and conduct an independent assessment of subcontracting opportunities for underutilized businesses.

(3) If a bidder does not demonstrate best efforts to meet the mandatory subcontracting minimum, the awarding authority shall deem the bidder non-responsive.

(4) An awarding authority shall include the mandatory subcontracting minimum in any solicitations, requests for qualifications, requests for proposals, and any other bidding notices to prospective bidders.

(e) The procurement office of a local municipality located in the Commonwealth shall make available an online public database for the purpose of tracking underutilized business

(1) The procurement office shall engage in ongoing collection of the following information: (1) the names and contact information of underutilized businesses in (2) the total year-to-date dollar value paid directly to underutilized subcontractors on city procurement projects, (3) the total year-to-date percentage of participation of underutilized businesses in the relevant geographic area, (4) the year-to-date percentage of participation of underutilized businesses in the relevant geographic area for each category of subcontract or trade work enumerated in subsection 44F(1)(a), and (5) the diversity plans of each bidder on any public construction project.

(f) In addition to a public database containing information about a low to underutilized business participation goals in public construction projects, a local procurement office shall

333 create and make available to small businesses and micro-businesses a public dashboard listing  
334 upcoming public construction project opportunities.

335 (1) A procurement officer may post an upcoming contracting opportunity prior to  
336 soliciting prospective bidders from a list of past bidders.

337 (2) A procurement officer may make good faith efforts to advertise the availability of the  
338 dashboard to underutilized businesses a reasonable amount of time prior to the main website.

339 (3) The dashboard shall set forth the following information:

340 (a) The contract type

341 (b) The estimated total contract value

342 (c) The expected categories of subcontract and trade work required

343 (d) The expected period of performance

344 (e) The contract-specific underutilized business participation goals

345 (f) The date that an invitation for bids will be issued and published

346 (g) Any other information that the procurement officer deems necessary and beneficial to  
347 underutilized businesses.

348 (h) For a competitive grant program to be administered by the supplier diversity office, in  
349 consultation with the secretary of technology services and security, to assist cities and towns  
350 with information technology to facilitate the provisions of this section, including compiling data  
351 to track the participation of and contracts awarded to minority-owned and women-owned

businesses, small and micro-businesses, and local businesses. Provided, that eligible uses shall include, but not limited to, planning and studies, purchase, procurement, acquisition, licensing

SECTION 12. Subsection (3) of section 44J of chapter 149, as so appearing, is hereby amended by inserting the following clause:

(a) An awarding authority may split any contract or preliminary plans and specifications for the purpose of making public projects more accessible to underutilized micro-businesses.

(i) For each individual new contract created from a split contract or preliminary plans and specifications, an awarding authority shall adhere to the bidding procedures and provisions of this section as if the contract or preliminary plans and specifications had not been split.

SECTION 13. Section 39M of chapter 30, as so appearing, is hereby amended by inserting after subsection (e), the following subsection:

(f) When authorized by majority vote, a chief procurement officer may establish a sheltered market program, as established under section 44K of chapter 149, in conformity with the requirements of this section.

SECTION 14. Section 49 of chapter 7C, as so appearing, is hereby amended by inserting after subsection (e), the following new subsection:-

(f) On any project procured under this chapter, including by any city, town, or agency, board, commission, authority or instrumentality thereof, an awarding authority may set project participation goals and/or include as an additional qualification that applicant meet these goals or engage in good faith efforts to meet these goals.

(i) Such good faith efforts may include:-

(a) Ensuring the participation of underutilized businesses;

(b) Outreach to local communities and underutilized businesses within these communities, including communicating project opportunities;

(c) Developing creative, specific plans to increase diversity and inclusion of underutilized businesses.

(ii) An awarding authority may require applicants to provide an affidavit that they will exercise good faith efforts to meet project goals.

(iii) An awarding authority may exercise discretion to reject any application that does not show a commitment to diversity and inclusion.

SECTION 15. Subsection (a) of section 18 of chapter 30B, as so appearing, is hereby amended by striking the definition of "Disadvantaged vendor" and inserting in place thereof the following new definition:

any business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "Minority business" set forth in section forty of chapter seven, and any business beneficially owned by one or more women as provided in the definition of "Women-owned business" set forth in said section 40N and any business beneficially owned by 1 or more veterans as provided in the definition of "veteran-owned business" as set forth in section 40N, and any small business as provided in the definition of - business as provided in the - having its principal office in the geographic area over which the procurement officer has jurisdiction and the owners of more than 50 percent of the business

393 enterprise are residents of the geographic area over which the procurement officer has  
394 jurisdiction.