

107TH CONGRESS
2^D SESSION

H. R. 5766

To create Federal advertising procurement opportunities for minority business concerns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 2002

Ms. KILPATRICK introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To create Federal advertising procurement opportunities for minority business concerns, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds the following:

5 (1) Minority business concerns are of vital im-
6 portance to job growth and the economic strength of
7 the United States but have faced historic exclusion
8 and underutilization in Federal advertising procure-
9 ment.

1 (2) All departments and agencies within the ex-
2 ecutive branch with procurement authority should
3 take all necessary steps, as permitted by law, to in-
4 crease contracting for Federal advertising between
5 the Federal Government and minority business con-
6 cerns.

7 **SEC. 2. RESPONSIBILITIES OF EXECUTIVE DEPARTMENTS**
8 **AND AGENCIES WITH PROCUREMENT AU-**
9 **THORITY RELATING TO FEDERAL ADVER-**
10 **TISING PROCUREMENT.**

11 (a) IN GENERAL.—Each executive department and
12 agency with procurement authority shall—

13 (1) ensure substantial participation in Federal
14 advertising procurements by minority business con-
15 cerns;

16 (2) ensure that the creation, placement, and
17 transmission of Federal advertising by the depart-
18 ment or agency is fully reflective of the diversity of
19 the United States, including ensuring placement
20 with respect to publications and television and radio
21 stations that reach specific ethnic and racial audi-
22 ences;

23 (3) ensure that payment for Federal advertising
24 is commensurate with fair market rates in the rel-
25 evant market;

1 (4) structure Federal advertising contracts as
2 commercial acquisitions consistent with part 12 of
3 the Federal Acquisition Regulation to enhance par-
4 ticipation by minority business concerns;

5 (5) aggressively seek to ensure that minority
6 business concerns are aware of Federal advertising
7 procurement opportunities through the wide dissemi-
8 nation of contract announcements using the forms of
9 communication which will be most effective in reach-
10 ing such concerns, including the Internet, speciality
11 press, and trade press;

12 (6) work with the Small Business Administra-
13 tion to ensure that eligible small business concerns
14 receive information regarding sole source Federal
15 advertising contracts awarded under section 8(a) of
16 the Small Business Act (15 U.S.C. 637(a));

17 (7) ensure that the price evaluation preference
18 programs authorized by section 7102 of the Federal
19 Acquisition Streamlining Act of 1994 (15 U.S.C.
20 644 note) are used to the maximum extent per-
21 mitted by law when granting Federal advertising
22 contracts to minority business concerns;

23 (8) aggressively use small business concerns en-
24 gaged in the advertising industry and certified by
25 the Small Business Administration as eligible to re-

1 ceive benefits under section 8(a) of the Small Busi-
2 ness Act (15 U.S.C. 637(a)), particularly those con-
3 cerns in the developmental stage of the program, so
4 that such concerns have an opportunity to overcome
5 artificial barriers to Federal advertising procure-
6 ment;

7 (9) take all reasonable steps to ensure that
8 prime contractors meet, or exceed Federal adver-
9 tising subcontracting goals and enforce Federal ad-
10 vertising subcontracting commitments as required by
11 section 8(d) of the Small Business Act (15 U.S.C.
12 637(d)) and other related laws, including ensuring
13 that prime contractors actively solicit bids for Fed-
14 eral advertising subcontracting opportunities from
15 minority business concerns and fulfill their subcon-
16 tracting obligations to such concerns;

17 (10) ensure that—

18 (A) contracts which involve commitments
19 to subcontract with minority business concerns
20 include clauses providing for the assessment of
21 liquidated damages when such commitments are
22 not met; and

23 (B) such clauses are enforced;

24 (11) encourage the establishment of mentoring
25 and teaming relationships to foster the development

1 of minority business concerns which are engaged in
2 the advertising industry and to facilitate long-term
3 business relationships among such concerns;

4 (12) offer information, training, and technical
5 assistance programs for minority business concerns
6 which are engaged in the advertising industry, in-
7 cluding, where appropriate, Government acquisition
8 forecasts in order to assist such concerns in devel-
9 oping their products, skills, business planning prac-
10 tices, and marketing techniques;

11 (13) train procurement officials regarding the
12 policy of including minority business concerns in
13 Federal advertising procurement, including struc-
14 turing procurements to facilitate participation by
15 such concerns;

16 (14) provide the information required by the
17 Department of Commerce when it requests data to
18 develop the benchmarks used in the price evaluation
19 preference programs authorized by section 7102 of
20 the Federal Acquisition Streamlining Act of 1994
21 (15 U.S.C. 644 note); and

22 (15) ensure that Directors of Offices of Small
23 and Disadvantaged Business Utilization carry out
24 their responsibilities to maximize the participation of
25 minority business concerns in Federal advertising

1 procurement and, in particular, ensure that the Di-
2 rectors report directly to the head of each depart-
3 ment or agency as required by law.

4 (b) COMPREHENSIVE PLAN.—Each department and
5 agency with procurement authority shall—

6 (1) not later than 90 days after the date of the
7 enactment of this Act, develop a long-term com-
8 prehensive plan to implement the requirements of
9 subsection (a) and submit such plan to the Director
10 of the Office of Management and Budget, who shall
11 review such plan and report to the President on its
12 sufficiency; and

13 (2) not later than April 30 of each year—

14 (A) assess its efforts and the results of
15 those efforts to increase utilization of minority
16 business concerns which are engaged in the ad-
17 vertising industry as prime contractors and sub-
18 contractors; and

19 (B) submit a report regarding those efforts
20 to the President through the Director of the Of-
21 fice of Management and Budget, who shall re-
22 view the report.

1 **SEC. 3. GOVERNMENT-WIDE GOALS FOR FEDERAL ADVER-**
2 **TISING PROCUREMENT CONTRACTS TO**
3 **SMALL BUSINESS CONCERNS.**

4 Section 15(g) of the Small Business Act (15 U.S.C.
5 644(g)) is amended by adding at the end the following
6 new paragraph:

7 “(3) APPLICATION TO FEDERAL ADVER-
8 TISING.—

9 “(A) IN GENERAL.—With respect to con-
10 tracts for Federal advertising, each goal and re-
11 quirement described in this subsection and sub-
12 section (h) which relates to small business con-
13 cerns, small business concerns owned and con-
14 trolled by service-disabled veterans, small busi-
15 ness concerns owned and controlled by veterans,
16 qualified HUBZone small business concerns,
17 small business concerns owned and controlled
18 by socially and economically disadvantaged indi-
19 viduals, or small business concerns owned and
20 controlled by women shall be applied separately
21 with respect to such concerns which are en-
22 gaged in the advertising industry.

23 “(B) FEDERAL ADVERTISING.—For pur-
24 poses of this paragraph, the term ‘Federal ad-
25 vertising’ means any product or service which
26 involves the use of media, regardless of the me-

1 dium employed, to recruit personnel for the
2 Federal Government or to promote any Federal
3 program or the sale or use of any Federal prod-
4 uct or service, including any public service an-
5 nouncement and any request for proposal.”.

6 **SEC. 4. GENERAL SERVICES ADMINISTRATION SCHEDULES.**

7 (a) INCREASED PARTICIPATION BY CERTAIN CON-
8 CERNS.—The Administrator of the Small Business Ad-
9 ministration and the Administrator of General Services
10 shall act promptly to expand inclusion on General Service
11 Administration schedules of small business concerns
12 owned and controlled by socially and economically dis-
13 advantaged individuals and other minority business con-
14 cerns, which are engaged in the advertising industry, and
15 provide greater opportunities for such concerns to partici-
16 pate in orders under such schedules. The Administrator
17 of General Services shall ensure that procurement and
18 program officials at all levels that use such schedules ag-
19 gressively seek to utilize the schedule contracts of such
20 concerns.

21 (b) APPLICABILITY TOWARD PROCUREMENT
22 GOALS.—The Administrator of General Services shall
23 allow all executive departments and agencies ordering
24 under the Multiple Award Schedule from small business
25 concerns owned and controlled by socially and economi-

1 cally disadvantaged individuals that are engaged in the ad-
2 vertising industry to count those orders toward their pro-
3 curement goals with respect to such concerns.

4 **SEC. 5. REVIEW OF BUNDLING CONTRACTS.**

5 (a) IN GENERAL.—The head of each executive de-
6 partment and agency shall submit to the Administrator
7 of the Small Business Administration for review any pro-
8 posed bundling of contract requirements which includes
9 one or more Federal advertising requirements. The deter-
10 mination of the Administrator with regard to the appro-
11 priateness of bundling in each instance must be carefully
12 reviewed by the department or agency head, or his or her
13 designee, and must be given due consideration. If there
14 is an unresolvable conflict, the Administrator or the de-
15 partment or agency may seek assistance from the Director
16 of the Office of Management and Budget.

17 (b) BUNDLING OF CONTRACT REQUIREMENTS.—For
18 purposes of this section, the term “bundling of contract
19 requirements” has the meaning given such term in section
20 3(o)(2) of the Small Business Act (15 U.S.C. 632(o)(2)).

21 **SEC. 6. AWARDS PROGRAM.**

22 The Secretary of Commerce and the Administrator
23 of the Small Business Administration shall jointly carry
24 out a feasibility study to determine the appropriateness
25 of establishing an awards program for executive depart-

1 ments and agencies that best exemplify the letter and in-
2 tent of this Act in increasing opportunities for small busi-
3 ness concerns owned and controlled by socially and eco-
4 nomically disadvantaged individuals and other minority
5 business concerns in Federal advertising procurement.
6 Such study shall be submitted to the President and to
7 Congress on the date that is 90 days after the date of
8 the enactment of this Act.

9 **SEC. 7. DEFINITIONS.**

10 For purposes of this Act:

11 (1) **FEDERAL ADVERTISING.**—The term “Fed-
12 eral advertising” means any product or service which
13 involves the use of media, regardless of the medium
14 employed, to recruit personnel for the Federal Gov-
15 ernment or to promote any Federal program or the
16 sale or use of any Federal product or service, includ-
17 ing any public service announcement and any re-
18 quest for proposal.

19 (2) **MINORITY BUSINESS CONCERN.**—The term
20 “minority business concern” means any business
21 concern which would, but for any applicable size
22 standards, be a small business concern owned and
23 controlled by socially and economically disadvan-
24 taged individuals.

1 (3) SMALL BUSINESS CONCERN OWNED AND
2 CONTROLLED BY SOCIALLY AND ECONOMICALLY DIS-
3 ADVANTAGED INDIVIDUALS.—The term “small busi-
4 ness concern owned and controlled by socially and
5 economically disadvantaged individuals” has the
6 meaning given such term in section 8(d)(3)(C) of
7 the Small Business Act (15 U.S.C. 637(d)(3)(C)).

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