

107TH CONGRESS
2D SESSION

S. 2753

To provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2002

Mr. KERRY (for himself, Mr. BOND, Mr. CLELAND, Ms. CANTWELL, Mr. BINGAMAN, and Mrs. CARNAHAN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, 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. SHORT TITLE.**

4 This Act may be cited as the “Small and Disadvan-
5 tagged Business Ombudsman Act”.

6 **SEC. 2. SBA SMALL AND DISADVANTAGED BUSINESS OM-**
7 **BUDSMAN FOR PROCUREMENT.**

8 Section 30 of the Small Business Act (15 U.S.C. 657)
9 is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (1), by striking “and”;

3 (B) in paragraph (2), by striking the pe-
4 riod and adding a semicolon; and

5 (C) by adding at the end the following:

6 “(3) ‘SDB Ombudsman’ means the Small and
7 Disadvantaged Business Ombudsman for Procure-
8 ment, designated under subsection (e); and

9 “(4) ‘Major Federal agency’ means an agency
10 of the United States Government that, in the pre-
11 vious fiscal year, entered into contracts with non-
12 Federal entities to provide the agency with a total
13 of not less than \$200,000,000 in goods or services.”;
14 and

15 (2) by adding at the end the following:

16 “(e) SBA SMALL AND DISADVANTAGED BUSINESS
17 OMBUDSMAN FOR PROCUREMENT.—

18 “(1) APPOINTMENT.—

19 “(A) IN GENERAL.—Not later than 180
20 days after the date of enactment of the Small
21 and Disadvantaged Business Ombudsman Act,
22 the Administrator shall designate a Small and
23 Disadvantaged Business Ombudsman for Pro-
24 curement (referred to in this section as the
25 ‘SDB Ombudsman’).

1 “(B) QUALIFICATIONS.—The SDB Om-
2 budsman shall be—

3 “(i) highly qualified, with experience
4 assisting small business concerns with Fed-
5 eral procurement; and

6 “(ii) designated from among employ-
7 ees of the Federal Government, to the ex-
8 tent practicable.

9 “(C) LINE OF AUTHORITY.—The SDB
10 Ombudsman shall report directly to the Admin-
11 istrator.

12 “(D) SENIOR EXECUTIVE SERVICE.—The
13 SDB Ombudsman shall be paid at an annual
14 rate not less than the minimum rate, nor more
15 than the maximum rate, for the Senior Execu-
16 tive Service under chapter 53 of title 5, United
17 States Code.

18 “(2) DUTIES.—The SDB Ombudsman shall—

19 “(A) work with each Federal agency with
20 procurement authority to ensure that small
21 business concerns are treated fairly in the pro-
22 curement process;

23 “(B) establish a procedure for receiving
24 comments from small business concerns and
25 personnel of the Office of Small and Disadvan-

1 taged Business Utilization of each Federal
2 agency regarding the activities of agencies and
3 prime contractors that are not small business
4 concerns on Federal procurement contracts; and

5 “(C) establish a procedure for addressing
6 the concerns received under subparagraph (B).

7 “(3) ANNUAL REPORT.—

8 “(A) IN GENERAL.—No later than 1 year
9 after the date of enactment of this subsection,
10 and annually thereafter, the SDB Ombudsman
11 shall provide a report to the Committee on
12 Small Business of the House of Representatives
13 and the Committee on Small Business and En-
14 trepreneurship of the Senate.

15 “(B) CONTENTS.—The report required
16 under subparagraph (A) shall contain—

17 “(i) information from the Federal
18 Procurement Data System pertaining to
19 contracting and subcontracting goals of the
20 Federal Government and each Federal
21 agency with procurement authority;

22 “(ii) a copy of the report submitted to
23 the SDB Ombudsman by each major Fed-
24 eral agency and an evaluation of the goal

1 attainment plans submitted to the SDB
2 Ombudsman pursuant to paragraph (5);

3 “(iii) an evaluation of the success or
4 failure of each major Federal agency in at-
5 taining its small business procurement
6 goals, including a ranking by agency on
7 the attainment of such goals;

8 “(iv) a summary of the efforts of each
9 major Federal agency to promote con-
10 tracting opportunities for small business
11 concerns by—

12 “(I) educating and training pro-
13 curement officers on the importance
14 of small business concerns to the
15 economy and to Federal contracting;
16 and

17 “(II) conducting outreach initia-
18 tives to promote prime and subcon-
19 tracting opportunities for small busi-
20 ness concerns;

21 “(v) an assessment of the knowledge
22 of the procurement staff of each major
23 Federal agency concerning programs that
24 promote small business contracting;

1 “(vi) substantiated comments received
2 from small business concerns and per-
3 sonnel of the Office of Small and Dis-
4 advantaged Business Utilization of each
5 Federal agency regarding the treatment of
6 small business concerns by Federal agen-
7 cies on Federal procurement contracts;

8 “(vii) an analysis of the responsive-
9 ness of each Federal agency to small busi-
10 ness concerns with respect to Federal con-
11 tracting and subcontracting;

12 “(viii) an assessment of the compli-
13 ance of each Federal agency with section
14 15(k) of the Small Business Act (15
15 U.S.C. 644(k); and

16 “(ix) a description of any discrimina-
17 tion faced by small business concerns
18 based on their status as small business
19 concerns or the gender or the social or eco-
20 nomic status of their owners.

21 “(C) NOTICE AND COMMENT.—

22 “(i) IN GENERAL.—The SDB Om-
23 budsman shall provide notice to each Fed-
24 eral agency identified in the report pre-
25 pared under subparagraph (A) that such

1 agency has 60 days to submit comments
2 on the draft report to the SDB Ombuds-
3 man before the final report is submitted to
4 Congress under subparagraph (A).

5 “(ii) INCLUSION OF OUTSIDE COM-
6 MENTS.—

7 “(I) IN GENERAL.—The final re-
8 port prepared under this paragraph
9 shall contain a section in which Fed-
10 eral agencies are given an opportunity
11 to respond to the report contents with
12 which they disagree.

13 “(II) NO RESPONSE.—If no re-
14 sponse is received during the 60-day
15 comment period from a particular
16 agency identified in the report, the
17 final report under this paragraph
18 shall indicate that the agency was af-
19 forded an opportunity to comment.

20 “(D) CONFIDENTIALITY.—In preparing
21 the report under this paragraph, the SDB Om-
22 budsman shall keep confidential all information
23 that may expose a small business concern or an
24 employee of an Office of Small and Disadvan-
25 taged Business Utilization to possible retalia-

1 tion from the agency or prime contractor identi-
2 fied by the small business concern, unless the
3 small business concern or employee of the Of-
4 fice of Small and Disadvantaged Business Utili-
5 zation consents in writing to the release of such
6 information.

7 “(4) INTERAGENCY COORDINATION.—Each
8 Federal agency, through its Office of Small and Dis-
9 advantaged Business Utilization, shall assist the
10 SDB Ombudsman to ensure compliance with—

11 “(A) the Federal procurement goals estab-
12 lished pursuant to section 15(g);

13 “(B) the procurement policy outlined in
14 section 8(d), which states that small business
15 concerns should be given the maximum prac-
16 ticable opportunity to participate in Federal
17 contracts;

18 “(C) Federal prime contractors small busi-
19 ness subcontracting plans negotiated under sec-
20 tion 8(d)(4)(B);

21 “(D) the responsibilities outlined under
22 section 15(k); and

23 “(E) any other provision of this Act.

24 “(5) GOAL ATTAINMENT PLAN.—If a major
25 Federal agency fails to meet any small business pro-

1 curement goal under this Act in any fiscal year, such
2 agency shall submit a goal attainment plan to the
3 SDB Ombudsman not later than 90 days after the
4 end of the fiscal year in which the goal was not met,
5 containing—

6 “(A) a description of the circumstances
7 that contributed to the failure of the agency to
8 reach its small business procurement goals; and

9 “(B) a detailed plan for meeting the small
10 business procurement goals in the fiscal year
11 immediately following the fiscal year in which
12 the goal was not met.

13 “(6) EFFECT ON OTHER OFFICES.—Nothing in
14 this section is intended to replace or diminish the ac-
15 tivities of the Office of Small and Disadvantaged
16 Business Utilization or any similar office in any
17 Federal agency.

18 “(7) ADMINISTRATIVE RESOURCES.—To enable
19 the SDB Ombudsman to carry out the duties re-
20 quired by this subsection, the Administrator shall
21 provide the SDB Ombudsman with sufficient—

22 “(A) personnel;

23 “(B) office space; and

1 “(C) dedicated financial resources, which
2 are specifically identified in the annual budget
3 request of the Administration.”.

4 **SEC. 3. OFFICE OF SMALL AND DISADVANTAGED BUSINESS**
5 **UTILIZATION.**

6 (a) DIRECTOR.—Section 15(k) of the Small Business
7 Act (15 U.S.C. 644(k)) is amended—

8 (1) in the first sentence, by inserting “(except
9 for the Administration)” after “Federal agency”;

10 (2) by striking paragraph (2), and inserting the
11 following:

12 “(2) be well qualified, with experience assisting
13 small business concerns with Federal procurement,
14 and receive basic pay at a rate not to exceed the rate
15 of pay for grade 15 of the General Schedule, under
16 section 5332 of title 5, United States Code;”;

17 (3) by striking paragraph (3) and inserting the
18 following:

19 “(3) be appointed by the head of such agency,
20 be responsible to, and report only to, the head or
21 deputy head of such agency for policy matters, per-
22 sonnel matters, budgetary matters, and all other
23 matters;”;

24 (4) in paragraph (9), by striking “, and” and
25 inserting a semicolon;

1 (5) in paragraph (10)—

2 (A) by striking “or section 8(a) of this Act
3 or section 2323 of title 10, United States Code.
4 Such recommendations” and inserting “section
5 8(a), or section 2323 of title 10, United States
6 Code, which recommendations”; and

7 (B) by striking the period at the end and
8 inserting a semicolon; and

9 (6) by striking the undesignated matter after
10 paragraph (10) and inserting the following:

11 “(11) not concurrently serve as the chief pro-
12 curement officer for such agency; and

13 “(12) if the officer is employed by a major Fed-
14 eral agency (as defined in section 30)—

15 “(A) have no other job duties beyond those
16 described under this subsection;

17 “(B) receive basic pay at a rate equal to
18 the rate of pay for grade 15 of the General
19 Schedule, under section 5332 of title 5, United
20 States Code; and

21 “(C) attend the meetings of the Office of
22 Small and Disadvantaged Business Utilization
23 Council.”.

24 (b) OFFICE OF SMALL AND DISADVANTAGED BUSI-
25 NESS UTILIZATION COUNCIL.—

1 (1) ESTABLISHMENT.—There is established an
2 interagency council to be known as the “Office of
3 Small and Disadvantaged Business Utilization Coun-
4 cil” (in this subsection referred to as the “Council”).

5 (2) MEMBERSHIP.—The Council shall be com-
6 posed of—

7 (A) the Director of Small and Disadvan-
8 tagged Business Utilization from each Federal
9 agency;

10 (B) the Small and Disadvantaged Business
11 Ombudsman for Procurement, as an ex officio
12 member; and

13 (C) other individuals, as ex officio mem-
14 bers, as the Council considers necessary.

15 (3) LEADERSHIP.—

16 (A) CHAIRPERSON.—The members of the
17 Council shall elect a chairperson, who shall
18 serve for a 1-year, renewable term.

19 (B) OTHER POSITIONS.—The members of
20 the Council may elect other leadership posi-
21 tions, as necessary, from among its members.

22 (C) VOTING.—Each member of the Coun-
23 cil, except for ex officio members, shall have
24 voting rights on the Council.

25 (4) MEETINGS.—

1 (A) FREQUENCY.—The Council shall meet
2 not less frequently than once every 2 months.

3 (B) ISSUES.—At the meetings under sub-
4 paragraph (A), the Council shall discuss issues
5 faced by each Office of Small and Disadvan-
6 taged Business Utilization, including—

7 (i) personnel matters;

8 (ii) barriers to small business partici-
9 pation in Federal procurement;

10 (iii) agency compliance with section
11 15(k) of the Small Business Act (15
12 U.S.C. 644(k)), as amended by this Act;
13 and

14 (iv) any other matter that the Council
15 considers necessary to further the mission
16 of each Office of Small and Disadvantaged
17 Business Utilization.

18 (5) FUNDING LIMITATION.—The Small Busi-
19 ness Administration shall not provide the Council
20 with financial assistance to carry out the provisions
21 of this section.

22 **SEC. 4. GOVERNMENTWIDE SMALL BUSINESS GOAL.**

23 Section 15(g)(1) of the Small Business Act (15
24 U.S.C. 644(g)(1)) is amended in the second sentence, by
25 striking “23 percent of the total value of all prime con-

1 tract awards for each fiscal year.” and inserting “26 per-
2 cent of the total value of all prime contract awards for
3 fiscal year 2004, not less than 28 percent of the total value
4 of all prime contract awards for fiscal year 2005, and not
5 less than 30 percent of the total value of all prime contract
6 awards for fiscal year 2006 and each fiscal year there-
7 after.”.

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