

Calendar No. 561107TH CONGRESS
2^D SESSION**S. 2753****[Report No. 107-251]**

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, Mrs. CARNAHAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

SEPTEMBER 3, 2002

Reported by Mr. KERRY, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. SBA SMALL AND DISADVANTAGED BUSINESS OM-
5 BUDSMAN FOR PROCUREMENT.**

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

8 (1) in subsection (a)—

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

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

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

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

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

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

23 “(e) **SBA SMALL AND DISADVANTAGED BUSINESS
24 OMBUDSMAN FOR PROCUREMENT.—**

25 “(1) **APPOINTMENT.—**

1 “(A) IN GENERAL.—Not later than 180
2 days after the date of enactment of the Small
3 and Disadvantaged Business Ombudsman Act,
4 the Administrator shall designate a Small and
5 Disadvantaged Business Ombudsman for Pro-
6 curement (referred to in this section as the
7 ‘SDB Ombudsman’).

8 “(B) QUALIFICATIONS.—The SDB Om-
9 budsman shall be—

10 “(i) highly qualified, with experience
11 assisting small business concerns with Fed-
12 eral procurement; and

13 “(ii) designated from among employ-
14 ees of the Federal Government, to the ex-
15 tent practicable.

16 “(C) LINE OF AUTHORITY.—The SDB
17 Ombudsman shall report directly to the Admin-
18 istrator.

19 “(D) SENIOR EXECUTIVE SERVICE.—The
20 SDB Ombudsman shall be paid at an annual
21 rate not less than the minimum rate, nor more
22 than the maximum rate, for the Senior Execu-
23 tive Service under chapter 53 of title 5, United
24 States Code.

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

1 “(A) work with each Federal agency with
2 procurement authority to ensure that small
3 business concerns are treated fairly in the pro-
4 curement process;

5 “(B) establish a procedure for receiving
6 comments from small business concerns and
7 personnel of the Office of Small and Disadvan-
8 taged Business Utilization of each Federal
9 agency regarding the activities of agencies and
10 prime contractors that are not small business
11 concerns on Federal procurement contracts; and

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

14 “(3) ANNUAL REPORT.—

15 “(A) IN GENERAL.—No later than 1 year
16 after the date of enactment of this subsection,
17 and annually thereafter, the SDB Ombudsman
18 shall provide a report to the Committee on
19 Small Business of the House of Representatives
20 and the Committee on Small Business and En-
21 trepreneurship of the Senate.

22 “(B) CONTENTS.—The report required
23 under subparagraph (A) shall contain—

24 “(i) information from the Federal
25 Procurement Data System pertaining to

1 contracting and subcontracting goals of the
2 Federal Government and each Federal
3 agency with procurement authority;

4 “(ii) a copy of the report submitted to
5 the SDB Ombudsman by each major Fed-
6 eral agency and an evaluation of the goal
7 attainment plans submitted to the SDB
8 Ombudsman pursuant to paragraph (5);

9 “(iii) an evaluation of the success or
10 failure of each major Federal agency in at-
11 taining its small business procurement
12 goals, including a ranking by agency on
13 the attainment of such goals;

14 “(iv) a summary of the efforts of each
15 major Federal agency to promote con-
16 tracting opportunities for small business
17 concerns by—

18 “(I) educating and training pro-
19 curement officers on the importance
20 of small business concerns to the
21 economy and to Federal contracting;
22 and

23 “(II) conducting outreach initia-
24 tives to promote prime and subcon-

1 tracting opportunities for small busi-
2 ness concerns;

3 “(v) an assessment of the knowledge
4 of the procurement staff of each major
5 Federal agency concerning programs that
6 promote small business contracting;

7 “(vi) substantiated comments received
8 from small business concerns and per-
9 sonnel of the Office of Small and Dis-
10 advantaged Business Utilization of each
11 Federal agency regarding the treatment of
12 small business concerns by Federal agen-
13 cies on Federal procurement contracts;

14 “(vii) an analysis of the responsive-
15 ness of each Federal agency to small busi-
16 ness concerns with respect to Federal con-
17 tracting and subcontracting;

18 “(viii) an assessment of the compli-
19 ance of each Federal agency with section
20 15(k) of the Small Business Act (15
21 U.S.C. 644(k); and

22 “(ix) a description of any discrimina-
23 tion faced by small business concerns
24 based on their status as small business

1 concerns or the gender or the social or eco-
2 nomic status of their owners.

3 “(C) NOTICE AND COMMENT.—

4 “(i) IN GENERAL.—The SDB Om-
5 budsman shall provide notice to each Fed-
6 eral agency identified in the report pre-
7 pared under subparagraph (A) that such
8 agency has 60 days to submit comments
9 on the draft report to the SDB Ombuds-
10 man before the final report is submitted to
11 Congress under subparagraph (A).

12 “(ii) INCLUSION OF OUTSIDE COM-
13 MENTS.—

14 “(I) IN GENERAL.—The final re-
15 port prepared under this paragraph
16 shall contain a section in which Fed-
17 eral agencies are given an opportunity
18 to respond to the report contents with
19 which they disagree.

20 “(II) NO RESPONSE.—If no re-
21 sponse is received during the 60-day
22 comment period from a particular
23 agency identified in the report, the
24 final report under this paragraph

1 shall indicate that the agency was af-
2 farded an opportunity to comment.

3 “(D) CONFIDENTIALITY.—In preparing
4 the report under this paragraph, the SDB Om-
5 budsman shall keep confidential all information
6 that may expose a small business concern or an
7 employee of an Office of Small and Disadvan-
8 taged Business Utilization to possible retalia-
9 tion from the agency or prime contractor identi-
10 fied by the small business concern, unless the
11 small business concern or employee of the Of-
12 fice of Small and Disadvantaged Business Utili-
13 zation consents in writing to the release of such
14 information.

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

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

21 “(B) the procurement policy outlined in
22 section 8(d), which states that small business
23 concerns should be given the maximum prac-
24 ticable opportunity to participate in Federal
25 contracts;

1 “(C) Federal prime contractors small busi-
2 ness subcontracting plans negotiated under sec-
3 tion 8(d)(4)(B);

4 “(D) the responsibilities outlined under
5 section 15(k); and

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

7 “(5) GOAL ATTAINMENT PLAN.—If a major
8 Federal agency fails to meet any small business pro-
9 curement goal under this Act in any fiscal year, such
10 agency shall submit a goal attainment plan to the
11 SDB Ombudsman not later than 90 days after the
12 end of the fiscal year in which the goal was not met,
13 containing—

14 “(A) a description of the circumstances
15 that contributed to the failure of the agency to
16 reach its small business procurement goals; and

17 “(B) a detailed plan for meeting the small
18 business procurement goals in the fiscal year
19 immediately following the fiscal year in which
20 the goal was not met.

21 “(6) EFFECT ON OTHER OFFICES.—Nothing in
22 this section is intended to replace or diminish the ac-
23 tivities of the Office of Small and Disadvantaged
24 Business Utilization or any similar office in any
25 Federal agency.

1 “(7) ADMINISTRATIVE RESOURCES.—To enable
2 the SDB Ombudsman to carry out the duties re-
3 quired by this subsection, the Administrator shall
4 provide the SDB Ombudsman with sufficient—

5 “(A) personnel;

6 “(B) office space; and

7 “(C) dedicated financial resources, which
8 are specifically identified in the annual budget
9 request of the Administration.”.

10 **SEC. 3. OFFICE OF SMALL AND DISADVANTAGED BUSINESS**
11 **UTILIZATION.**

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

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

16 (2) by striking paragraph (2), and inserting the
17 following:

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

23 (3) by striking paragraph (3) and inserting the
24 following:

1 “(3) be appointed by the head of such agency,
2 be responsible to, and report only to, the head or
3 deputy head of such agency for policy matters, per-
4 sonnel matters, budgetary matters, and all other
5 matters;”;

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

8 (5) in paragraph (10)—

9 (A) by striking “or section 8(a) of this Act
10 or section 2323 of title 10, United States Code.
11 Such recommendations” and inserting “section
12 8(a), or section 2323 of title 10, United States
13 Code, which recommendations”; and

14 (B) by striking the period at the end and
15 inserting a semicolon; and

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

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

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

22 (A) have no other job duties beyond those
23 described under this subsection;

24 (B) receive basic pay at a rate equal to
25 the rate of pay for grade 15 of the General

1 Schedule, under section 5332 of title 5, United
2 States Code; and

3 “(C) attend the meetings of the Office of
4 Small and Disadvantaged Business Utilization
5 Council.”.

6 (b) OFFICE OF SMALL AND DISADVANTAGED BUSI-
7 NESS UTILIZATION COUNCIL.—

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

12 (2) MEMBERSHIP.—The Council shall be com-
13 posed of—

14 (A) the Director of Small and Disadvan-
15 taged Business Utilization from each Federal
16 agency;

17 (B) the Small and Disadvantaged Business
18 Ombudsman for Procurement, as an ex officio
19 member; and

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

22 (3) LEADERSHIP.—

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

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

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

7 (4) MEETINGS.—

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

10 (B) ISSUES.—At the meetings under sub-
11 paragraph (A), the Council shall discuss issues
12 faced by each Office of Small and Disadvan-
13 taged Business Utilization, including—

14 (i) personnel matters;

15 (ii) barriers to small business partici-
16 pation in Federal procurement;

17 (iii) agency compliance with section
18 15(k) of the Small Business Act (15
19 U.S.C. 644(k)), as amended by this Act;
20 and

21 (iv) any other matter that the Council
22 considers necessary to further the mission
23 of each Office of Small and Disadvantaged
24 Business Utilization.

1 ~~(5) FUNDING LIMITATION.—The Small Busi-~~
 2 ~~ness Administration shall not provide the Council~~
 3 ~~with financial assistance to carry out the provisions~~
 4 ~~of this section.~~

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

6 Section ~~15(g)(1)~~ of the Small Business Act (~~15~~
 7 ~~U.S.C. 644(g)(1)~~) is amended in the second sentence, by
 8 striking ~~“23~~ percent of the total value of all prime con-
 9 tract awards for each fiscal year.” and inserting ~~“26 per-~~
 10 cent of the total value of all prime contract awards for
 11 fiscal year 2004, not less than 28 percent of the total value
 12 of all prime contract awards for fiscal year 2005, and not
 13 less than 30 percent of the total value of all prime contract
 14 awards for fiscal year 2006 and each fiscal year there-
 15 after.”.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Small Business Procure-*
 18 *ment Ombudsman Act of 2002”.*

19 **SEC. 2. SMALL BUSINESS PROCUREMENT OMBUDSMAN.**

20 *Section 15 of the Small Business Act (15 U.S.C. 644)*
 21 *is amended by adding at the end the following:*

22 ~~“(q) SMALL BUSINESS PROCUREMENT OMBUDSMAN.—~~

23 ~~“(1) DEFINITIONS.—As used in this section, the~~
 24 ~~following definitions shall apply:~~

1 “(A) *CHIEF COUNSEL FOR ADVOCACY.*—*The*
2 *term ‘Chief Counsel for Advocacy’ means the*
3 *chief counsel in the Office of Advocacy of the Ad-*
4 *ministration.*

5 “(B) *MAJOR FEDERAL AGENCY.*—*The term*
6 *‘major Federal agency’ means an agency of the*
7 *United States Government that, in the previous*
8 *fiscal year, entered into contracts with non-Fed-*
9 *eral entities to provide the agency with a total*
10 *of not less than \$200,000,000 in goods or serv-*
11 *ices.*

12 “(C) *PROCUREMENT OMBUDSMAN.*—*The*
13 *term ‘Procurement Ombudsman’ means the*
14 *Small Business Procurement Ombudsman, des-*
15 *ignated under paragraph (2).*

16 “(2) *APPOINTMENT.*—

17 “(A) *IN GENERAL.*—*Not later than 180*
18 *days after the date of enactment of the Small*
19 *Business Procurement Ombudsman Act of 2002,*
20 *the Chief Counsel for Advocacy shall designate a*
21 *Small Business Procurement Ombudsman (re-*
22 *ferred to in this subsection as the ‘Procurement*
23 *Ombudsman’).*

24 “(B) *QUALIFICATIONS.*—*The Procurement*
25 *Ombudsman shall be—*

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

4 “(ii) *designated from among employees*
5 *of the Federal Government, to the extent*
6 *practicable.*

7 “(C) *LINE OF AUTHORITY.—The Procure-*
8 *ment Ombudsman shall report directly to the*
9 *Chief Counsel for Advocacy.*

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

16 “(3) *DUTIES.—The Procurement Ombudsman*
17 *shall—*

18 “(A) *work with each Federal agency with*
19 *procurement authority to ensure that small busi-*
20 *ness concerns are treated fairly in the procure-*
21 *ment process by establishing a procedure for re-*
22 *ceiving, and keeping confidential, comments*
23 *from small business concerns and personnel of*
24 *the Office of Small and Disadvantaged Business*
25 *Utilization of each Federal agency regarding the*

1 *activities of agencies and prime contractors, that*
2 *are not small business concerns, on Federal con-*
3 *tracts;*

4 “(B) *establish a procedure for addressing*
5 *the concerns received under subparagraph (A);*

6 “(C) *complete and submit the annual report*
7 *required under paragraph (4); and*

8 “(D) *have no other significant job duties*
9 *other than those described under this subsection.*

10 “(4) *ANNUAL REPORT.—*

11 “(A) *IN GENERAL.—Not later than 1 year*
12 *after the date of enactment of this subsection,*
13 *and not later than the last day of the first full*
14 *week of March in subsequent years, the Procure-*
15 *ment Ombudsman shall provide a report to the*
16 *Committee on Small Business of the House of*
17 *Representatives and the Committee on Small*
18 *Business and Entrepreneurship of the Senate.*

19 “(B) *CONTENTS.—The report required*
20 *under subparagraph (A) shall contain—*

21 “(i) *information from the Federal Pro-*
22 *curement Data System pertaining to con-*
23 *tracting and subcontracting goals of the*
24 *Federal Government and each Federal agen-*
25 *cy with procurement authority;*

1 “(ii) the goal attainment plan required
2 under section 4(a) of the Small Business
3 Procurement Ombudsman Act of 2002 and
4 an evaluation of that plan;

5 “(iii) an evaluation of the success or
6 failure of each major Federal agency in at-
7 taining its small business procurement
8 goals, including an overall score for each
9 agency on the attainment of such goals;

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

14 “(I) educating and training con-
15 tracting officers on the importance of
16 small business concerns to the economy
17 and to Federal contracting; and

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

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

1 *of acquisition training programs (whether*
2 *conducted electronically or in person) in en-*
3 *hancing that knowledge;*

4 “(vi) *conclusions and recommendations*
5 *based upon substantiated comments received*
6 *from small business concerns and personnel*
7 *of the Office of Small and Disadvantaged*
8 *Business Utilization of each Federal agency*
9 *regarding the treatment of small business*
10 *concerns by Federal agencies on Federal*
11 *contracts;*

12 “(vii) *an analysis of the responsiveness*
13 *of each Federal agency to small business*
14 *concerns with respect to Federal contracting*
15 *and subcontracting;*

16 “(viii) *an assessment of the compliance*
17 *of each Federal agency with subsection (k);*
18 *and*

19 “(ix) *a description of any discrimina-*
20 *tion faced by small business concerns based*
21 *on their status as small business concerns,*
22 *qualified HUBZone small business con-*
23 *cerns, small business concerns owned and*
24 *controlled by disabled veterans, or the gen-*

1 *der or the social or economic status of their*
2 *owners.*

3 “(C) *NOTICE AND COMMENT.*—

4 “(i) *IN GENERAL.*—*The Procurement*
5 *Ombudsman shall provide notice to each*
6 *Federal agency identified in the report pre-*
7 *pared under subparagraph (A) that such*
8 *agency has 60 days to submit comments on*
9 *the draft report to the Procurement Om-*
10 *budsman before the final report is submitted*
11 *to Congress under subparagraph (A).*

12 “(ii) *INCLUSION OF OUTSIDE COM-*
13 *MENTS.*—

14 “(I) *IN GENERAL.*—*The final re-*
15 *port prepared under this paragraph*
16 *shall contain a section in which Fed-*
17 *eral agencies are given an opportunity*
18 *to respond to the report contents with*
19 *which they disagree.*

20 “(II) *NO RESPONSE.*—*If no re-*
21 *sponse is received during the 60-day*
22 *comment period from a particular*
23 *agency identified in the report, the*
24 *final report under this paragraph shall*

1 *indicate that the agency was afforded*
2 *an opportunity to comment.*

3 “(D) *CONFIDENTIALITY.*—*In preparing the*
4 *report under this paragraph and carrying out*
5 *the duties under paragraph (3), the Procurement*
6 *Ombudsman shall keep confidential all informa-*
7 *tion that may expose a small business concern or*
8 *an employee of an Office of Small and Dis-*
9 *advantaged Business Utilization to possible re-*
10 *taliation from the agency or prime contractor*
11 *identified by the small business concern, unless*
12 *the small business concern or employee of the Of-*
13 *ice of Small and Disadvantaged Business Utili-*
14 *zation consents in writing to the release of such*
15 *information.*

16 “(5) *EFFECT ON OTHER OFFICES.*—*Nothing in*
17 *this subsection is intended to replace or diminish the*
18 *activities of the Office of Small and Disadvantaged*
19 *Business Utilization or any similar office in any*
20 *Federal agency.*

21 “(6) *ADMINISTRATIVE RESOURCES.*—*To enable*
22 *the Procurement Ombudsman to carry out the duties*
23 *required under this subsection, the Administrator*
24 *shall provide the Procurement Ombudsman with*
25 *sufficient—*

1 “(A) personnel;

2 “(B) office space; and

3 “(C) dedicated financial resources, which
4 shall be specifically identified in the annual
5 budget request of the Administration.”.

6 **SEC. 3. OFFICE OF SMALL AND DISADVANTAGED BUSINESS**

7 **UTILIZATION.**

8 Section 15(k) of the Small Business Act (15 U.S.C.
9 644(k)) is amended to read as follows:

10 “(k) **OFFICE OF SMALL AND DISADVANTAGED BUSI-**
11 **NESS UTILIZATION.**—

12 “(1) **ESTABLISHMENT.**—There is hereby estab-
13 lished in each Federal agency (except for the Admin-
14 istration) having procurement powers an office to be
15 known as the ‘Office of Small and Disadvantaged
16 Business Utilization’. The management of each such
17 office shall be vested in an officer or employee of such
18 agency who shall—

19 “(A) be known as the ‘Director of Small
20 and Disadvantaged Business Utilization’ for
21 such agency;

22 “(B) be well qualified, with experience as-
23 sisting small business concerns with Federal pro-
24 curement, and receive basic pay at a rate not to
25 exceed the rate of pay for grade 15 of the General

1 *Schedule, under section 5332 of title 5, United*
2 *States Code;*

3 *“(C) be appointed by the head of such agen-*
4 *cy, be responsible to, and report only to, the head*
5 *or deputy head of such agency for policy matters,*
6 *personnel matters, budgetary matters, and all*
7 *other matters;*

8 *“(D) be responsible for the implementation*
9 *and execution of the functions and duties under*
10 *sections 8 and 15 and all small business procure-*
11 *ment programs under this Act, which relate to*
12 *such agency, and cooperate and consult on a reg-*
13 *ular basis with the Administration with respect*
14 *to carrying out such functions and duties;*

15 *“(E) identify proposed solicitations that in-*
16 *volve significant bundling of contract require-*
17 *ments, and work with the agency acquisition of-*
18 *icials and the Administration to revise the pro-*
19 *urement strategies for such proposed solicita-*
20 *tions where appropriate to increase the prob-*
21 *ability of participation by small businesses as*
22 *prime contractors, or to facilitate small business*
23 *participation as subcontractors and suppliers, if*
24 *a solicitation for a bundled contract is to be*
25 *issued;*

1 “(F) assist small business concerns to ob-
2 tain payments, required late payment interest
3 penalties, or information regarding payments
4 due to such concerns from an executive agency or
5 a contractor, in conformity with chapter 39 of
6 title 31, United States Code, or any other protec-
7 tion for contractors or subcontractors (including
8 suppliers) that is included in the Federal Acqui-
9 sition Regulation or any individual agency sup-
10 plement to such Government-wide regulation;

11 “(G) have supervisory authority over per-
12 sonnel of such agency to the extent that the func-
13 tions and duties of such personnel relate to func-
14 tions and duties under sections 8 and 15 and all
15 small business procurement programs under this
16 Act;

17 “(H) assign a small business technical ad-
18 viser to each office to which the Administration
19 has assigned a procurement center
20 representative—

21 “(i) who shall be a full-time employee
22 of the procuring activity and shall be well
23 qualified, technically trained and familiar
24 with the supplies or services purchased at
25 the activity; and

1 “(ii) whose principal duty shall be to
2 assist the Administration procurement cen-
3 ter representative in his duties and func-
4 tions relating to sections 8 and 15 and all
5 small business procurement programs under
6 this Act;

7 “(I) assist the Procurement Ombudsman
8 with the duties assigned to the Procurement Om-
9 budsman under subsection (q)(3);

10 “(J) make recommendations to contracting
11 officers as to whether a particular contract re-
12 quirement should be awarded pursuant to sub-
13 section (a), section 8(a), or section 2323 of title
14 10, United States Code, which recommendations
15 shall be made with due regard to the require-
16 ments of subsection (m), and the failure of the
17 contracting officer to accept any such rec-
18 ommendations shall be documented and included
19 within the appropriate contract file;

20 “(K) not concurrently serve as the senior
21 procurement executive for such agency; and

22 “(L) if the officer is employed by a major
23 Federal agency—

1 “(i) have no other significant job du-
2 ties beyond those described under this sub-
3 section;

4 “(ii) receive basic pay at a rate not
5 less than the rate of pay for grade 15 of the
6 General Schedule, under section 5332 of
7 title 5, United States Code; and

8 “(iii) attend, to the maximum prac-
9 tical extent, the meetings of the Office of
10 Small and Disadvantaged Business Utiliza-
11 tion Council.

12 “(2) OFFICE OF SMALL AND DISADVANTAGED
13 BUSINESS UTILIZATION COUNCIL.—

14 “(A) ESTABLISHMENT.—There is estab-
15 lished an interagency council to be known as the
16 ‘Office of Small and Disadvantaged Business
17 Utilization Council’ (in this subsection referred
18 to as the ‘Council’).

19 “(B) MEMBERSHIP.—The Council shall be
20 composed of—

21 “(i) the Director of Small and Dis-
22 advantaged Business Utilization from each
23 Federal agency;

24 “(ii) the Small Business Procurement
25 Ombudsman, as an *ex officio* member;

1 “(iii) *the Associate Deputy Adminis-*
2 *trator for Government Contracting and*
3 *Business Development of the Administra-*
4 *tion, as an ex officio member; and*

5 “(iv) *other individuals, as ex officio*
6 *members, as the Council considers nec-*
7 *essary.*

8 “(C) *LEADERSHIP.—*

9 “(i) *CHAIRPERSON.—The members of*
10 *the Council shall elect a chairperson, who*
11 *shall serve for a 1-year, renewable term.*

12 “(ii) *OTHER POSITIONS.—The mem-*
13 *bers of the Council may elect other leader-*
14 *ship positions, as necessary, from among its*
15 *members.*

16 “(D) *VOTING.—Each member of the Coun-*
17 *cil, except for ex officio members, shall have vot-*
18 *ing rights on the Council.*

19 “(E) *MEETINGS.—*

20 “(i) *FREQUENCY.—The Council shall*
21 *meet not less frequently than once every 2*
22 *months.*

23 “(ii) *ISSUES.—At the meetings under*
24 *clause (i), the Council shall discuss issues*
25 *faced by each Office of Small and Dis-*

1 *advantaged Business Utilization,*
 2 *including—*

3 *“(I) personnel matters;*

4 *“(II) barriers to small business*
 5 *participation in Federal procurement;*

6 *“(III) agency compliance with*
 7 *this subsection; and*

8 *“(IV) any other matter that the*
 9 *Council considers necessary to further*
 10 *the mission of each Office of Small and*
 11 *Disadvantaged Business Utilization.*

12 *“(F) FUNDING LIMITATION.—The Small*
 13 *Business Administration shall not provide the*
 14 *Council with financial assistance to carry out*
 15 *the provisions of this subsection.”.*

16 **SEC. 4. SMALL BUSINESS PROCUREMENT GOALS.**

17 *(a) GOAL ATTAINMENT PLAN.—Section 15(g) of the*
 18 *Small Business Act (15 U.S.C. 644(g)) is amended by add-*
 19 *ing at the end the following:*

20 *“(3) If a major Federal agency fails to meet any*
 21 *small business procurement goal under this subsection*
 22 *in any fiscal year, such agency shall submit a goal*
 23 *attainment plan to the Administration not later than*
 24 *90 days after the end of the fiscal year in which the*
 25 *goal was not met, containing—*

1 “(A) a description of the circumstances that
2 contributed to the failure of the agency to reach
3 its small business procurement goals; and

4 “(B) a detailed plan for meeting the small
5 business procurement goals in the fiscal year im-
6 mediately following the fiscal year in which the
7 goal was not met.”.

8 (b) *GOVERNMENTWIDE SMALL BUSINESS GOAL.*—Sec-
9 tion 15(g)(1) of the Small Business Act (15 U.S.C.
10 644(g)(1)) is amended, in the second sentence, by striking
11 “23 percent of the total value of all prime contract awards
12 for each fiscal year.” and inserting “26 percent of the total
13 value of all prime contract awards for fiscal year 2004, not
14 less than 28 percent of the total value of all prime contract
15 awards for fiscal year 2005, and not less than 30 percent
16 of the total value of all prime contract awards for fiscal
17 year 2006 and each fiscal year thereafter.”.

Amend the title so as to read: “A bill to provide for a Small Business Procurement Ombudsman in the Office of Advocacy of the Small Business Administration, to strengthen the Office of Small and Disadvantaged Business Utilization at each Federal agency, and for other purposes.”.

Calendar No. 561

107TH CONGRESS
2^D SESSION

S. 2753

[Report No. 107-251]

A BILL

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

SEPTEMBER 3, 2002

Reported with an amendment and an amendment to the
title