

107TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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. PROCUREMENT OVERSIGHT.**

7       (a) SBA SMALL AND DISADVANTAGED BUSINESS

8 OMBUDSMAN FOR PROCUREMENT.—Section 30 of the

9 Small Business Act (15 U.S.C. 657) is amended—

10               (1) in subsection (a)—

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

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

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

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

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

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

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

17 “(1) APPOINTMENT.—

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

1           “(B) INTRAAGENCY RECRUITMENT.—The  
2           SDB Ombudsman shall be designated from  
3           among employees of the Administration, to the  
4           extent practicable.

5           “(C) LINE OF AUTHORITY.—The SDB  
6           Ombudsman shall report directly to the Admin-  
7           istrator.

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

9           “(A) work with each Federal agency with  
10          procurement authority to ensure that small  
11          business concerns are treated fairly in the pro-  
12          curement process; and

13          “(B) establish a procedure for receiving  
14          comments from small business concerns and the  
15          Office of Small and Disadvantaged Business  
16          Utilization of each Federal agency regarding  
17          the activities of agencies and prime contractors  
18          that are not small business concerns on Federal  
19          procurement contracts.

20          “(3) ANNUAL REPORT.—

21          “(A) IN GENERAL.—No later than 1 year  
22          after the date of enactment of this subsection,  
23          and annually thereafter, the SDB Ombudsman  
24          shall provide a report to the Committee on  
25          Small Business of the House of Representatives

1 and the Committee on Small Business and En-  
2 trepreneurship of the Senate.

3 “(B) CONTENTS.—The report required  
4 under subparagraph (A) shall contain—

5 “(i) information from the Federal  
6 Procurement Data System pertaining to  
7 contracting and subcontracting goals of the  
8 Federal government and each Federal  
9 agency with procurement authority;

10 “(ii) a copy of the report submitted to  
11 the SDB Ombudsman by each major Fed-  
12 eral agency and an evaluation of the goal  
13 attainment plans submitted to the SDB  
14 Ombudsman pursuant to paragraph (5);

15 “(iii) an evaluation of the success or  
16 failure of each major Federal agency in at-  
17 taining its small business procurement  
18 goals, including a ranking by agency on  
19 the attainment of such goals;

20 “(iv) a summary of the efforts of each  
21 major Federal agency to promote con-  
22 tracting opportunities for small business  
23 concerns by—

24 “(I) educating and training pro-  
25 curement officers on the importance

1 of small business concerns to the  
2 economy and to Federal contracting;  
3 and

4 “(II) conducting outreach initia-  
5 tives to promote prime and subcon-  
6 tracting opportunities for small busi-  
7 ness concerns;

8 “(v) an assessment of the knowledge  
9 of the procurement staff of each major  
10 Federal agency concerning programs that  
11 promote small business contracting;

12 “(vi) substantiated comments received  
13 from small business concerns and the Of-  
14 fice of Small and Disadvantaged Business  
15 Utilization of each Federal agency regard-  
16 ing the treatment of small business con-  
17 cerns by Federal agencies and prime con-  
18 tractors (that are not small business con-  
19 cerns) on Federal procurement contracts;

20 “(vii) an analysis of the responsive-  
21 ness of each Federal agency to small busi-  
22 ness concerns with respect to Federal con-  
23 tracting and subcontracting;

24 “(viii) an assessment of the compli-  
25 ance of each Federal agency with section

1 15(k) of the Small Business Act (15  
2 U.S.C. 644(k); and

3 “(ix) a description of any discrimina-  
4 tion faced by small business concerns  
5 based on the gender or the social or eco-  
6 nomic status of their owners.

7 “(C) NOTICE AND COMMENT.—

8 “(i) IN GENERAL.—The SDB Om-  
9 budsman shall provide notice to each Fed-  
10 eral agency and prime contractor (that is  
11 not a small business concern) identified in  
12 the report prepared under subparagraph  
13 (A) that such agency or contractor has 60  
14 days to submit comments on the draft re-  
15 port to the SDB Ombudsman before the  
16 final report is submitted to Congress under  
17 subparagraph (A).

18 “(ii) INCLUSION OF OUTSIDE COM-  
19 MENTS.—

20 “(I) IN GENERAL.—The final re-  
21 port prepared under this paragraph  
22 shall contain a section in which Fed-  
23 eral agencies and prime contractors  
24 (that are not small business concerns)  
25 are given an opportunity to respond to

1 the report contents with which they  
2 disagree.

3 “(II) NO RESPONSE.—If no re-  
4 sponse is received during the 60-day  
5 comment period from a particular  
6 agency or contractor identified in the  
7 report, the final report under this  
8 paragraph shall indicate that the  
9 agency or contractor was afforded an  
10 opportunity to comment.

11 “(D) CONFIDENTIALITY.—In preparing  
12 the report under this paragraph, the SDB Om-  
13 budsman shall keep confidential all information  
14 that may expose a small business concern or  
15 Office of Small and Disadvantaged Business  
16 Utilization to possible retaliation from the agen-  
17 cy or prime contractor identified by the small  
18 business concern, unless the small business con-  
19 cern or Office of Small and Disadvantaged  
20 Business Utilization consents in writing to the  
21 release of such information.

22 “(4) INTERAGENCY COORDINATION.—Each  
23 Federal agency, through its Office of Small and Dis-  
24 advantaged Business Utilization, shall assist the  
25 SDB Ombudsman and the Administrator of the Of-

1        fice of Federal Procurement Policy to ensure compli-  
2        ance with—

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

5                “(B) the procurement policy outlined in  
6                section 8(d), which states that small business  
7                concerns should be given the maximum prac-  
8                ticable opportunity to participate in Federal  
9                contracts;

10               “(C) Federal prime contractors small busi-  
11               ness subcontracting plans negotiated under sec-  
12               tion 8(d)(4)(B);

13               “(D) the responsibilities outlined under  
14               section 15(k); and

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

16               “(5) GOAL ATTAINMENT PLAN.—If a major  
17               Federal agency fails to meet any small business pro-  
18               curement goal under this Act in any fiscal year, such  
19               agency shall submit a goal attainment plan to the  
20               SDB Ombudsman not later than 90 days after the  
21               end of the fiscal year in which the goal was not met,  
22               containing—

23               “(A) a description of the circumstances  
24               that contributed to the failure of the agency to  
25               reach its small business procurement goals; and

1           “(B) a detailed plan for meeting the small  
2           business procurement goals in the fiscal year  
3           immediately following the fiscal year in which  
4           the goal was not met.

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

10          “(7) ADMINISTRATIVE RESOURCES.—To enable  
11          the SDB Ombudsman to carry out the duties re-  
12          quired by this subsection, the Administrator shall  
13          provide the SDB Ombudsman with sufficient—

14                 “(A) personnel;

15                 “(B) office space; and

16                 “(C) dedicated financial resources, which  
17                 are specifically identified in the annual budget  
18                 request of the Administration.”.

19 **SEC. 3. GOVERNMENT-WIDE SMALL BUSINESS GOAL.**

20          Section 15(g)(1) of the Small Business Act (15  
21          U.S.C. 644(g)(1)) is amended in the second sentence, by  
22          striking “23 percent” and inserting “30 percent”.