

103^D CONGRESS
2^D SESSION

H. R. 4263

To promote the participation of small business enterprises, including minority small businesses, in Federal procurement and Government contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1994

Mr. LAFALCE introduced the following bill; which was referred to the Committee on Small Business

A BILL

To promote the participation of small business enterprises, including minority small businesses, in Federal procurement and Government contracts, 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 That this Act may be cited as the “Small Business and

4 Minority Small Business Procurement Opportunities Act

5 of 1994”.

6 **SEC. 2. FUNCTIONS OF SMALL BUSINESS ADMINISTRATION.**

7 The Small Business Act is amended by adding the

8 following new section:

1 “SEC. 29. The Administrator of the Small Business
2 Administration, in coordination with other Federal agen-
3 cies, shall—

4 “(1) develop plans to coordinate and promote
5 the use of the Federal Acquisition Computer Net-
6 work by small businesses that incorporate outreach
7 efforts by the Administration, agency Offices of
8 Small and Disadvantaged Business Utilization,
9 Small Business Development Centers, and other ap-
10 appropriate organizations; and

11 “(2) inform and provide consistent and com-
12 prehensive training on the Network for small busi-
13 nesses.”.

14 **SEC. 3. SMALL BUSINESS RESERVATION.**

15 Section 15(j) of the Small Business Act (15 U.S.C.
16 644(j)) is amended to read as follows:

17 “(j)(1) Each contract for the procurement of goods
18 and services that has an anticipated value not in excess
19 of \$100,000 shall be reserved exclusively for small busi-
20 ness concerns unless the contracting officer is unable to
21 obtain offers from two or more small business concerns
22 that (A) are competitive with market prices, and (B) are
23 competitive with regard to the quality and delivery of the
24 goods or services being procured.

1 “(2) In carrying out paragraph (1), a contracting of-
2 ficer shall consider any offer that is responsive and that
3 is received in a timely manner from an eligible small busi-
4 ness offeror.

5 “(3) Nothing in paragraph (1) shall be construed as
6 precluding an award of a contract with a value not in ex-
7 cess of \$100,000 under the authority of—

8 “(A) section 8(a) of this Act;

9 “(B) section 2323 of title 10, United States
10 Code;

11 “(C) section 316 of the Federal Property and
12 Administrative Services Act of 1949; or

13 “(D) section 12 of the Business Opportunity
14 Development Reform Act of 1988 (Public Law 100-
15 656; U.S.C. 644 note).

16 “(4) In the case of contracts referred to in paragraph
17 (1) that are entered into with small business concerns,
18 contracting officers shall, wherever circumstances permit,
19 provide for the use of fast payment terms and the dis-
20 bursement of payment through electronic fund transfer.

21 “(5) A purchase by an executive agency with an an-
22 ticipated value of the micro-purchase threshold or less
23 shall not be subject to the small business reserve require-
24 ments of paragraph (1) of this subsection.”.

1 **SEC. 4. TECHNICAL AND CONFORMING CHANGES.**

2 (a) Section 3(m) of the Small Business Act (15
3 U.S.C. 632(m)) is amended to read as follows:

4 “(m) For purposes of this Act, the term ‘simplified
5 acquisition threshold’ has the meaning given such term in
6 section 4A of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 403A) and the term ‘micro-purchase
8 threshold’ has the meaning given such term in section
9 4B(e) of the Office of Federal Procurement Policy Act (41
10 U.S.C. 401 et seq.).”.

11 (b) Section 8(d)(2)(A) of the Small Business Act (15
12 U.S.C. 637(d)(2)(A)) is amended by striking out “does
13 not exceed the small purchase threshold” and inserting in
14 lieu thereof “is for an amount not in excess of the sim-
15 plified acquisition threshold”.

16 **SEC. 5. CONTRACT GOALS FOR SMALL BUSINESSES OWNED**
17 **BY ECONOMICALLY AND SOCIALLY DIS-**
18 **ADVANTAGED INDIVIDUALS AND FOR CER-**
19 **TAIN INSTITUTIONS OF HIGHER EDUCATION.**

20 Section 8(g) of the Small Business Act is amended
21 to read as follows:

22 “(g)(1) The President annually shall establish Gov-
23 ernment-wide goals for procurement contracts awarded to
24 small business concerns and small business concerns
25 owned and controlled by socially and economically dis-
26 advantaged individuals. The Government-wide goal for

1 participation by small business concerns shall be estab-
2 lished at not less than 20 percent of the total value of
3 all prime contract awards for each fiscal year. The Gov-
4 ernment-wide goal for participation by small business con-
5 cerns owned and controlled by socially and economically
6 disadvantaged individuals shall be established at not less
7 than 5 percent of the total value of all prime contract and
8 subcontract awards for each fiscal year.

9 “(2) A goal of 5 percent of the amount described in
10 paragraph (5) shall be the objective of an executive agency
11 in each of fiscal years 1994 through 2000 for the total
12 combined amount obligated for contracts and subcontracts
13 entered into with—

14 “(A) small business concerns, including mass
15 media and advertising firms, owned and controlled
16 by socially and economically disadvantaged individ-
17 uals, the majority of the earnings of which directly
18 accrue to such individuals;

19 “(B) historically Black colleges and universities,
20 including any nonprofit research institution that was
21 an integral part of such a college or university be-
22 fore November 14, 1986; and

23 “(C) minority institutions (as defined in section
24 1046(3) of the Higher Education Act of 1965 (20
25 U.S.C. 1135d-5(3)), which, for the purposes of this

1 section, shall include Hispanic-serving institutions
2 (as defined in section 316(b)(1) of such Act (20
3 U.S.C. 1059c(b)(1)).

4 “(3) The head of the agency shall establish a specific
5 goal within the overall 5 percent goal for the award of
6 prime contracts and subcontracts to historically Black col-
7 leges and universities and minority institutions in order
8 to increase the participation of such colleges and univer-
9 sities in the program provided for by this subsection.

10 “(4) The administration, in consultation with the Ad-
11 ministrator of the Office of Federal Procurement Policy,
12 shall provide procedures or guidelines for contracting offi-
13 cers to set goals which executive agency prime contractors
14 that are required to submit subcontracting plans under
15 subsection (d) in furtherance of the agency’s program to
16 meet the 5 percent goal specified in paragraph (2) should
17 meet in awarding subcontracts, including subcontracts to
18 minority-owned media, to entities described in that para-
19 graph.

20 “(5) The requirements of paragraphs (2) through (4)
21 for any fiscal year apply to the total value of all prime
22 contract awards entered into by the executive agency for
23 such fiscal year.

24 “(6) (A) To attain the goal specified in paragraph
25 (2), the head of the agency shall provide technical assist-

1 ance to the entities referred to in that subsection and, in
2 the case of historically Black colleges and universities and
3 minority institutions, shall also provide infrastructure as-
4 sistance.

5 “(B) Technical assistance provided under this section
6 shall include information about the program, advice about
7 the agency’s procurement procedures, instruction in prep-
8 aration of proposals, and other such assistance as the
9 agency head considers appropriate. If the resources of the
10 executive agency are inadequate to provide such assist-
11 ance, the agency head may enter into contracts with mi-
12 nority private sector entities with experience and expertise
13 in the design, development, and delivery of technical as-
14 sistance services to eligible individuals, business firms and
15 institutions, acquisition agencies, and prime contractors.
16 Agency contracts with such entities shall be awarded an-
17 nually, based upon, among other things, the number of
18 minority small business concerns, historically Black col-
19 leges and universities, and minority institutions that each
20 such entity brings into the program.

21 “(C) The agency head shall, to the maximum extent
22 practical, carry out programs under this section at col-
23 leges, universities, and institutions that agree to bear a
24 substantial portion of the cost associated with the pro-
25 grams.

1 “(7) To attain the goal of paragraph (2),

2 “(A) The head of the agency shall—

3 “(i) ensure that substantial progress is
4 made in increasing awards of agency contracts
5 to entities described in paragraph (2);

6 “(ii) exercise his utmost authority, re-
7 sourcefulness, and diligence; and

8 “(iii) actively monitor and assess the
9 progress of prime contractors of the agency in
10 attaining such goal.

11 “(B) In making the assessment under subpara-
12 graph (A)(iii), the agency head shall evaluate the ex-
13 tent to which use of the authority provided in para-
14 graphs (C) and (D) and compliance with the re-
15 quirement in paragraph (E) is effective for facilitat-
16 ing the attainment of the goal.

17 “(C) To the extent practicable and when nec-
18 essary to facilitate achievement of the 5 percent goal
19 described in paragraph (2), the agency head shall
20 make advance payments under section 305 of title
21 III of the Federal Property and Administrative Serv-
22 ices Act of 1949 (41 U.S.C. 251 et seq.) to contrac-
23 tors described in paragraph (2). The Federal Acqui-
24 sition Regulation shall provide guidance to contract-

1 ing officers for making advance payments to entities
2 described in subsection (a)(1) under such section.

3 “(D) To the extent practicable and when nec-
4 essary to facilitate achievement of the 5 percent goal
5 described in paragraph (2), the agency head may
6 enter into contracts using less than full and open
7 competitive procedures (including awards under sub-
8 section (a) of this section) and partial set asides for
9 entities described in paragraph (2), but shall pay a
10 price not exceeding fair market cost by more than
11 10 percent in payment per contract to contractors or
12 subcontractors described in paragraph (2). The
13 agency head shall adjust the percentage specified in
14 the preceding sentence for any industry category if
15 available information clearly indicates that
16 nondisadvantaged small business concerns in such
17 industry category are generally being denied a rea-
18 sonable opportunity to compete for contracts because
19 of the use of that percentage in the application of
20 this paragraph.

21 “(E) To the extent practicable, the agency head
22 shall maximize the number of minority small busi-
23 ness concerns, historically Black colleges and univer-
24 sities, and minority institutions participating in the
25 program.

1 “(F) The administration, in consultation with
2 the Administrator of the Office of Federal Procure-
3 ment Policy, shall prescribe regulations which pro-
4 vide for the following:

5 “(i) Procedures or guidance for contracting
6 officers to provide incentives for prime contrac-
7 tors described in paragraph (2) to increase sub-
8 contractor awards to entities described in such
9 paragraph.

10 “(ii) A requirement that contracting offi-
11 cers emphasize the award of contracts to enti-
12 ties described in paragraph (2) in all industry
13 categories, including those categories in which
14 such entities have not traditionally dominated.

15 “(iii) Guidance to executive agency person-
16 nel on the relationship among the following pro-
17 grams:

18 “(I) The program implementing this
19 subsection.

20 “(II) The program established under
21 subsection (a).

22 “(III) The small business set-aside
23 program established under section 15(a) of
24 this Act (15 U.S.C. 644(a)).

1 “(iv) With respect to an agency procure-
2 ment which is reasonably likely to be set aside
3 for entities described in paragraph (2), a re-
4 quirement that (to the maximum extent prac-
5 ticable) the procurement be designated as such
6 a set-aside before the solicitation for the pro-
7 curement is issued.

8 “(v) Policies and procedures which, to the
9 maximum extent practicable, will ensure that
10 current levels in the number or dollar value of
11 contracts awarded under the program estab-
12 lished under subsection (a) (15 U.S.C. 637(a))
13 and under the small business set-aside program
14 established under section 15(a) of this Act (15
15 U.S.C. 644(a)) are maintained and that every
16 effort is made to provide new opportunities for
17 contract awards to eligible entities, in order to
18 meet the goal of paragraph (2).

19 “(vi) Implementation of this section in a
20 manner which will not alter the procurement
21 process under the program established under
22 subsection (a) of this Act (15 U.S.C. 637(a)).

23 “(vii) A requirement that one factor used
24 in evaluating the performance of a contracting
25 officer be the ability of the officer to increase

1 contract awards to entities described in para-
2 graph (2).

3 “(viii) Increased technical assistance to en-
4 tities described in paragraph (2).

5 “(8)(A) Whoever for the purpose of securing a con-
6 tract or subcontract under paragraph (2), misrepresents
7 the status of any concern or person as a small business
8 concern owned and controlled by a minority (as described
9 in paragraph (2), shall be punished by imprisonment for
10 not more than one year or a fine of not less than \$10,000,
11 or both.

12 “(B) The Federal Acquisition Regulation shall pro-
13 hibit awarding a contract under this section to an entity
14 described in paragraph (2) unless the entity agrees to
15 comply with the requirements of section 15(o)(1) of this
16 Act (15 U.S.C. 644(o)(1)).

17 “(9)(A) To the maximum extent practicable, the head
18 of the agency shall—

19 “(i) ensure that no particular industry category
20 bears a disproportionate share of the contracts
21 awarded to attain the goal established by paragraph
22 (2); and

23 “(ii) ensure that contracts awarded to attain
24 the goal established by paragraph (2) are made

1 across the broadest possible range of industry cat-
2 egories.

3 “(B) Under procedures prescribed by the head of the
4 agency and approved by the administration, a person may
5 request the agency head to determine whether the use of
6 small disadvantaged business set asides by a contracting
7 activity of the agency has caused a particular industry cat-
8 egory to bear a disproportionate share of the contracts
9 awarded to attain the goal established for that contracting
10 activity for the purposes of this subsection. Upon making
11 a determination that a particular industry category is
12 bearing a disproportionate share, the agency head shall
13 take appropriate actions to limit the contracting activity’s
14 use of set asides in awarding contracts in that particular
15 industry category.

16 “(10)(A) The administration shall issue regulations
17 to ensure that potential contractors submitting sealed bids
18 or competitive proposals to the executive agency for pro-
19 curement contracts to be awarded under the program pro-
20 vided for by this subsection are complying with applicable
21 subcontracting plan requirements of subsection (d) of this
22 Act (15 U.S.C. 637(d)).

23 “(B) The regulations required by paragraph (A) shall
24 ensure that, with respect to a sealed bid or competitive
25 proposal for which the bidder or offeror is required to ne-

1 negotiate or submit a subcontracting plan under subsection
2 (d) of this Act (15 U.S.C. 637(d)), the subcontracting
3 plan shall be a factor in evaluating the bid or proposal.

4 “(11)(A) Not later than December 15 of each year,
5 the administration shall submit to Congress a report on
6 the progress of each executive agency toward attaining the
7 goal of paragraph (2) during the preceding fiscal year.

8 “(B) The report required under paragraph (A) shall
9 include a description of—

10 “(i) the degree of participation by small busi-
11 nesses owned and controlled by socially and economi-
12 cally disadvantaged individuals in procurements con-
13 ducted by each executive agency; and

14 “(ii) the extent of compliance by executive
15 agencies with the goals for participation by such
16 businesses required by paragraph (1), relating to
17 Government-wide small business and small disadvan-
18 taged business goals for procurement contracts.

19 “(12) This subsection shall not be construed as modi-
20 fying or superseding any other provision of law establish-
21 ing a goal or requirement for an agency to obligate 5
22 percent or more of the total value of all prime contract
23 awards entered into by the agency for a fiscal year with
24 any entity described in paragraph (2).

