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PATRICIA R. FORBES, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

June 2, 2003

Mr. Harold Damelin
Inspector General
U.S. Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Dear Mr. Damelin:

On May 7, 2003, the General Accounting Office (GAO) released a study of federal online data systems and the awarding of contracts to large businesses that were intended for small businesses. The study found that five large companies that were reviewed *"received contracts totaling \$1.1 billion in FY 2001, including \$460 million as small business awards."* This situation appears to involve misrepresentation, which would be punishable under section 16(d) of the Small Business Act (15 U.S.C. 645(d)). Section 16(d) of the Small Business Act (15 U.S.C. 645(d)(2)) authorizes a penalty of \$500,000 or up to 10 years in prison for any company that knowingly misrepresents its status as a *"small business concern, HUBZone small business concern, a socially and economically disadvantaged business concern, or a small business concern owned and controlled by women"* in order to obtain a Federal prime or subcontract.

In a May 21, 2003 letter to Mr. Paul Gutierrez, a representative of small businesses raising concerns about the use of PRO-Net by large businesses, SBA Administrator Hector Barreto stated what the Agency views as its only remedy for such misrepresentation, specifically, *"when SBA finds that a registrant exceeds the small business size standard, it removes that registrant from PRO-Net."* Mr. Barreto further stated the Agency's current position that *"it does not have the legal authority to pursue penalties for misrepresentation of small business status on PRO-Net under 15 U.S.C. 645 (d)(2)."*

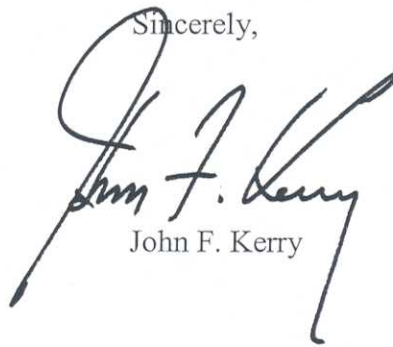
While I disagree with Mr. Barreto's assessment of SBA's oversight authority, it is clear that the Office of the Inspector General in the Small Business Administration does have the authority to conduct criminal investigations regarding violations of public laws, including the Small Business Act. In fact, it has come to my attention that your office sent a memorandum to Mr. Fred Armendariz, Associate Deputy Administrator for Government Contracting and Business Development in which he was informed that your office had begun an investigation of these potential violations.

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In light of the GAO's findings and as Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I request that your office re-open your investigation into possible criminal misrepresentation by all firms that were defined as "other than small" by the SBA, removed from the PRO-Net system, and subsequently recertified themselves as small businesses in order to be listed on PRO-Net for the purpose of qualifying for a Federal contract as a small business. If there is evidence that such companies intentionally misrepresented their small business status, I request that such cases be referred to the U.S. Attorney for prosecutorial consideration. On behalf of the small businesses that were robbed of the \$460 million worth of contracts that were awarded to the large businesses included in the GAO study and on behalf of the numerous small businesses who continue to see their fair share of Federal procurement dollars continue to dissipate, I ask that your investigation into this situation proceed expeditiously and that the Committee be kept informed of your progress on a regular basis.

Thank you for your prompt attention to these serious allegations. I look forward to working with you on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry". The signature is stylized with a large initial "J" and a long, sweeping underline that extends to the right and then loops back down.

John F. Kerry

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WASHINGTON, DC 20510-6350

June 2, 2003

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

The General Accounting Office (GAO), at the request of the Senate Committee on Small Business and Entrepreneurship, has conducted a study of federal online data systems and the awarding of contracts to large businesses that were intended for small businesses. The study found that five large companies that were reviewed *"received contracts totaling \$1.1 billion in FY 2001, including \$460 million as small business awards."*

The growing problem of large businesses being registered as small businesses on federal small business databases was the topic of a hearing held by the House Committee on Small Business. At the hearing, a number of cases of size status misrepresentation were reported to the Committee.

Section 16(d) of the Small Business Act imposes a penalty of \$500,000 or up to 10 years in prison for any company that knowingly misrepresents its status as a *"small business concern, HUBZone small business concern, a socially and economically disadvantaged business concern, or a small business concern owned and controlled by women"* in order to obtain a prime contract or subcontract.

Due to these reports, I have requested an investigation by the Inspector General of the Small Business Administration to look into possible cases of fraud by these companies to gain access to contracts that were intended for small businesses. If the Inspector General finds that there is evidence that these large firms intentionally misrepresented their size status on the PRO-Net network in order to receive federal contracts, they should be prosecuted to the fullest extent of the law.

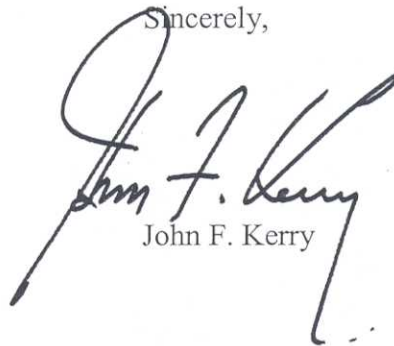
As reported to the Senate Committee on Small Business and Entrepreneurship, small businesses believe there is a lack of meaningful enforcement of existing laws governing federal prime contracting and subcontracting. If, as it appears, the current PRO-Net situation is robbing small businesses of hundreds of millions of dollars worth of federal contracts they deserve, it is violating the Small Business Act and possibly the False Claims Act. The Department of Justice should investigate and prosecute if the facts indicate violations of law.

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If this nation is going to effectively recover from this time of economic stagnation and rising unemployment, it is essential that the federal government do everything within its power to support the growth and development of small businesses, the nation's job creators. Without strict enforcement of these contracting laws, we will continue to see the reduction of federal contracting dollars going to small businesses and inaccurate reporting of small business participation in the multi-billion dollar federal procurement arena.

I look forward to working with you and the SBA's Administrator and Inspector General on this important matter.

Sincerely,

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John F. Kerry