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## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

September 8, 2003

The Honorable Hector V. Barreto  
Administrator  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street S.W.  
Washington, D.C. 20416

Dear Administrator Barreto,

I am writing to urge the Small Business Administration(SBA) to revisit the issue of maximum Federal contract opportunities for Small and Disadvantaged Businesses (SDBs).

On May 16, 2002, you responded to a letter from Senator Bond, then-Chair of the Senate Committee on Small Business and Entrepreneurship, and myself concerning the SDB set-asides. A copy of that correspondence is enclosed. In the letter, you stated that the increase in SDB contracting dollars from \$12.5 billion in FY 1995 to \$15.6 billion in FY 2001 is evidence that SDB set-asides are not necessary.

As you are aware, the SDB Set-aside program was placed under a temporary moratorium by President Clinton in 1995 to ensure that agencies would have the appropriate amount of time to re-structure their procurement programs to comply with the Supreme Court ruling in *Adarand Construction, Inc. v. Peña*. The sunset date passed more than five years ago but the moratorium on SDB set-aside programs is still in effect. To help SDBs comply with the Adarand-rule, the SBA restructured its program to create a two-tiered qualification of both socially and economically disadvantaged, which allows individuals who are not in the listed racial groups to have access to these set-asides. Further, the Congress has authorized the creation of a pilot set-aside program for Women-Owned Businesses.

I also have concerns about your conclusion regarding contracting goals. In your April 12, 2002 letter to Senator Bond and myself, you stated, "*SDB contracting dollars have risen from \$12.5 billion in FY 1995 to \$15.6 billion in FY 2001. Consequently, we believe that SDB set-asides are unnecessary.*" What your response omitted was that in FY 1995 the Federal government entered into contracts worth more than \$202 billion, and approximately \$235 billion in 2001. Increasing the allocation of contracts to SDBs by one half of one percent over a 6-year period, while a step in the right direction, is not enough.

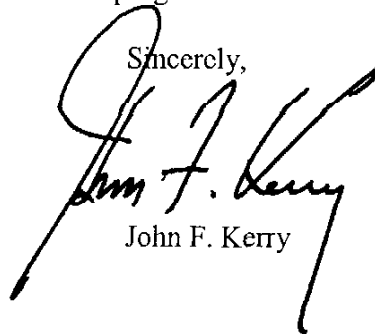
Moreover, the Federal government has failed to meet the 23% government-wide goal for small business utilization in Federal procurement. Agencies have continually failed to meet the goals for socially and economically disadvantaged, women owned businesses, service disabled veteran owned, and HUBZone firms, all of which contribute to the overall 23% goal. Part of the problem faced by small businesses participating in these programs and by those attempting to enforce small business utilization goals is the perception that these goals are intended to be a maximum set-aside for small firms. They are not. They are minimum thresholds.

Section 8(d)(1) of the Small Business Act (15 U.S.C. 637 (d)) states *"It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency."* When analyzing strategies and goals for SDB utilization, closely following the language of the law with respect to the terms "maximum extent practicable" and "maximum practicable utilization" is essential for ensuring that disadvantaged businesses receive the "maximum practicable opportunity" to Federal contracts.

I would like clarification on the following questions. Has the SBA defined "maximum practicable opportunity?" If, in your role as SBA Administrator, you promote the perception that simply meeting the 5% SDB goal is sufficient, does that not undermine the intent of section 8(d) and the "maximum practicable opportunity" clause within the Small Business Act? What is the Agency doing to promote attainment of these goals and maximization of Federal contracting opportunities for SDBs?

As Ranking Member of the Committee on Small Business and Entrepreneurship, I recommend that the SBA reinstitute the SDB set-aside program.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry". The signature is stylized and written over the printed name below it.

John F. Kerry