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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

PATRICIA R. FORBES, MAJORITY STAFF DIRECTOR AND CHIEF COUNSEL
EMILIA DISANTO, REPUBLICAN STAFF DIRECTOR

April 12, 2002

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

Dear Administrator Barreto:

We are writing to urge the Small Business Administration (SBA) to revisit the issue of set-asides for Small Disadvantaged Businesses (SDBs).

The Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* (*Adarand*) resulted in a revamping of Federal programs designed to assist minorities. One affected program was the government's SDB program, which was intended to help socially and economically disadvantaged small businesses overcome the social and economic constraints they face when doing business with the Federal government. In response to the *Adarand* ruling's "strict scrutiny" test, under which minority programs must be narrowly tailored to serve a compelling governmental interest, the statute and regulations establishing the civilian agency set-aside for SDBs were suspended. A comparable suspension applied to the statutory and regulatory provisions establishing SDB set-asides at the Department of Defense. When the SDB set-aside was suspended, it was with the understanding that, if SDB participation in Federal contracting declined, the issue would be revisited. In addition, the Department of Commerce was to study the suspension of the SDB set-aside program and report on its impact. To date, the Commerce Department has not completed this study.

Since implementation of the post-*Adarand* rule suspending the SDB set-aside, the percentage of major Federal agencies' contract dollars awarded to non-8(a) SDB firms has declined 32 percent. Although the Commerce Department has not yet fulfilled its commitment to review the SDB set-aside issue, it appears that, given the sharp decline in Federal contracts being awarded to non-8(a) SDBs, the time may have come to end the moratorium on set-asides. Suspending the set-aside, combined with other changes in acquisition practice, has made achievement of the government's SDB goals increasingly difficult. For example, the use of best value criteria to make contracting awards has substantially limited the benefits of the price evaluation preference available to SDB firms competing for Federal government contracts.

Accordingly, we would value hearing the SBA's opinion on re-establishing this important tool for the development and growth of socially and economically disadvantaged small

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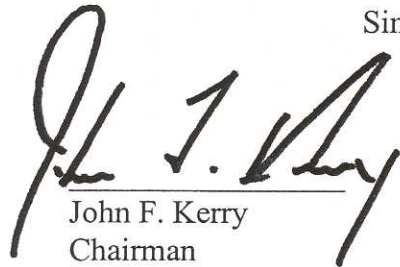
The Honorable Hector Barreto

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businesses. Due to the critical nature of this request, a response by April 30, 2002, would be appreciated.

Thank you for your attention to this important matter. Please feel free to contact us, or have your staff contact John DaSilva of Chairman Kerry's staff or Cordell Smith of Ranking Member Bond's staff at (202) 224-5175.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry". The signature is written in a cursive style with a large initial "J".

John F. Kerry
Chairman

A handwritten signature in black ink, appearing to read "Kit Bond". The signature is written in a cursive style with a large initial "K".

Kit Bond
Ranking Member