

JOHN F. KERRY, MASSACHUSETTS, CHAIRMAN
CHRISTOPHER S. BOND, MISSOURI, RANKING MEMBER

CARL LEVIN, MICHIGAN
TOM HARKIN, IOWA
JOSEPH I. LIEBERMAN, CONNECTICUT
PAUL D. WELLSTONE, MINNESOTA
MAX CLELAND, GEORGIA
MARY LANDRIEU, LOUISIANA
JOHN EDWARDS, NORTH CAROLINA
MARIA CANTWELL, WASHINGTON
JEAN CARNAHAN, MISSOURI

CONRAD BURNS, MONTANA
ROBERT F. BENNETT, UTAH
OLYMPIA J. SNOWE, MAINE
MICHAEL ENZI, WYOMING
PETER G. FITZGERALD, ILLINOIS
MIKE CRAPO, IDAHO
GEORGE ALLEN, VIRGINIA
JOHN ENSIGN, NEVADA

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

United States Senate

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

July 18, 2002

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
340 Dirksen Bldg.
United States Senate
Washington, D.C. 20510

Dear Chairman Lieberman:

We are writing to inform you of our concerns regarding the proposal sent to the Congress by the Administration for the creation of a Department of Homeland Security (Department). Specifically, as the Chairman and Ranking Member of the U.S. Senate Committee on Small Business and Entrepreneurship, we are concerned that the proposal does not adequately address the special circumstances of small business participation in the procurement needs for the proposed Department and will limit the ability of small businesses to participate in the Federal marketplace.

As you know, small businesses are more innovative and often provide better and cheaper products and services than their larger counterparts. However, small businesses often lack the resources to know about and bid on Federal procurement opportunities. By denying small businesses the opportunity to participate in the Federal marketplace, our government will lose the competition necessary to keep large firms from dominating the procurement process, as well as access to countless new, innovative technologies. Not only will this result in higher overall costs for the Federal government, but our economy as a whole will suffer as small businesses go out of business and job opportunities disappear.

On July 10, 2002, we hosted an exposition to showcase homeland security products developed by small businesses that can help the U.S. fight and win the war against terrorism. The Small Business Homeland Security Expo 2002 was a huge success, bringing together nearly 50 small businesses from across the country to showcase their products for the purpose of educating members of Congress about the importance of small business participation in homeland security.

It is interesting to note that despite the homeland security proposal, which in our view will limit small business participation in the proposed Department, Governor Tom Ridge, the Director of the White House Office of Homeland Security, spoke about the importance of small business participation in the fight against terrorism at our event. We also provided Governor

The Honorable Joseph I. Lieberman
July 18, 2002
Pg. 2

Ridge with a procurement book listing the hundreds of small businesses, nominated by their member of Congress, that wanted to participate in the Expo but could not because of limited space. Despite Governor Ridge's statement, we remain concerned that the proposed authority for the Department to invoke 40 U.S.C. 474 is overly broad, ill conceived and will actually cause delay and increased costs in the fight against terrorism.

For example, the proposal cites the Central Intelligence Agency as having similar authority as grounds for such a sweeping waiver to important procurement laws and regulations. However, a close examination of existing law refutes this argument. Contained within 40 U.S.C. 474 are 21 specific exemptions; however, they are never applied to a specific Department as envisioned by the proposal. For example, the Department of Housing and Urban Development has an exemption for the disposal of residential property and the Secretary of Agriculture has one with respect to the acquisition or disposal of property, but neither has a department-wide exemption from all procurement laws and regulations.

Although the proposal's supporting documentation states that 40 U.S.C. 474 will enable the Department to "avoid the application of any procurement statute or regulation that would impair the accomplishment of the Department's mission," we disagree with this assessment. It is our understanding that 40 U.S.C. 474 will not exempt the proposed Department from procurement provisions contained within the Small Business Act or several other pieces of legislation with procurement provisions as stated. However, the concept as proposed is very troubling.

If such a blanket exemption were provided for an entire department as large as the proposed Department of Homeland Security, we would, for the first time since procurement reform, be turning back the clock on important changes to Federal procurement rules. This will only serve to confound Federal contractors and increase their costs, confuse procurement personnel in the existing agencies that will make up the new Department, and create a procurement environment with no real checks on price or the reliability or legitimacy of the contractor. This can only result in delays in acquisition times, higher prices, decreased performance and greater opportunity for fraud. Additionally, it will bring about a drastic reduction in the number of small businesses participating in Federal procurement as agencies that must currently seek out small businesses and provide them with procurement opportunities, such as the Coast Guard and the Immigration and Naturalization Service, will have an exemption if placed within the proposed Department.

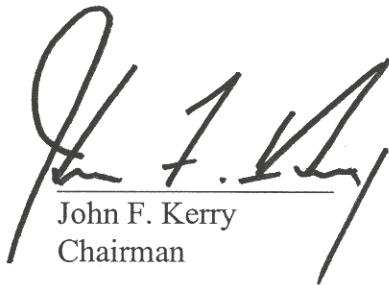
The argument that such a waiver is needed because of national security interests is also refuted by the current authority in existing procurement law to deal with emergency situations. Current procurement law not only envisions such emergencies as a terrorist attack, it accounts for them as well. For example, the response to the cowardly terrorist attacks on the Pentagon on September 11th of last year was a case study in the effectiveness of current emergency

The Honorable Joseph I. Lieberman
July 18, 2002
Pg. 3

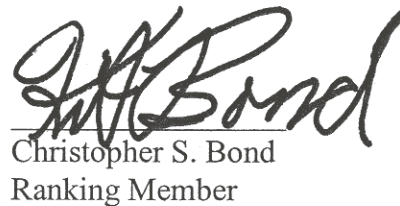
procurement authority. Not only was reconstruction begun almost immediately, but it has proceeded ahead of schedule. This could not have been accomplished without the proper training of acquisition personnel in existing procurement law and legitimate waiver authority based upon a specific need. The waiver authority envisioned for the proposed Department does not meet this criteria.

Therefore, we respectfully request that you provide no blanket waivers from current Federal statutory and regulatory requirements pertaining to the procurement process for the proposed Department. Further, given the importance of small business to the U.S. economy and the fight against terrorism, as well as the President's verbal commitment to a pro-small business agenda, we respectfully request that you include provisions that actively encourage any new Federal agency or department intended to help the U.S. fight and win the war against terrorism, such as the proposed Department, to proactively seek out and provide procurement opportunities to small businesses.

Sincerely,



John F. Kerry
Chairman



Christopher S. Bond
Ranking Member

cc: The Honorable Fred Thompson, Ranking Member