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# United States Senate

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

January 25, 2005

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:

On December 28, 2004, the Office of Advocacy at the Small Business Administration released an independent report citing that 44 companies listed in the Federal Procurement Data Center database as small were found to be "other than small." The study further estimated that over \$2 billion of Federal contracts reported as being awarded to small firms were actually given to these 44 firms, 39 of which were found to be large. This raises significant doubt about the reliability of procedures used by the Small Business Administration and their ability to effectively monitor the Federal government's small business goals.

Unfortunately, this report is just another example of the SBA's failure to effectively advocate on behalf of small businesses attempting to do business with the Federal government and the shortage of effective leadership and influence at the Agency. By law, the SBA is responsible for ensuring that small businesses are receiving their fair share of Federal contracts. This report shows there are serious problems with the procurement system and the effectiveness of the SBA in that role.

The Bush administration is quick to make boisterous claims about its support for small business. However, reports of small-contractor abuse, small businesses being overlooked, bait and switch tactics being used by large prime contractors, and reporting of inaccurate small business utilization data continue. At the same time, the largest 10 Federal contractors receive a growing percentage of taxpayer dollars.

This is not a new problem. There have been previous examples of the SBA receiving confirmation that the government had produced, and even touted, inaccurate small business utilization data. On March 24, 2004, the SBA announced that 25.37 percent of Federal contracts had gone to small businesses, well above the 23 percent government-wide goal. In fact, you were quoted as saying, "*These record-breaking numbers did not happen by accident. President Bush and the SBA have worked hard to help small entrepreneurs do business with the Federal government. The President is working to create an environment in which small business can succeed, and these tremendous results show that his policies are working.*" Only weeks later, the SBA reduced the 25 percent

estimate, citing inaccurate reporting from agencies and problems with the Federal Procurement Data System (FPDS).

On May 7, 2003, the House Committee on Small Business held a hearing titled, "Are Big Businesses Being Awarded Contracts Intended for Small Businesses?" During that hearing, a number of questions were raised regarding the accuracy of the data in the SBA's PRO-Net small business database. Fred Armendariz, former Associate Deputy Administrator, admitted that the SBA was aware of over 600 businesses listed on PRO-Net that did not meet the criteria for small business status. Further, testimony from David Cooper, Contracting Issues Director with the General Services Administration (GSA), raised "*serious questions about relying on the FPDS data to measure federal agencies' efforts to meet the government's 23 percent small business goal.*" Even with numerous unanswered questions regarding the validity of the PRO-Net database, the SBA continued its plans to merge that database into the larger Central Contractor Registry (CCR) database.

Finally, section 16(d) of the Small Business Act provides for penalties that include "*cancellation of contracts, debarment, fines up to \$500,000 and up to 10 years in prison*" for a firm that misrepresents itself as small in order to receive Federal contracting benefits as a small firm. However, I am aware of no evidence that a single firm has ever been penalized for misrepresenting themselves as a small firm over the past four years. By failing to enforce the law and the penalties it affords, the SBA is fostering an atmosphere that encourages widespread fraud and abuse in small business contracting.

Therefore, as the Ranking Member of the Senate Committee on Small Business and Entrepreneurship, pursuant to section 10 of the Small Business Act, 15 U.S.C. 639, I request that a response to the following be submitted to the Senate Committee on Small Business and Entrepreneurship by February 9, 2005:

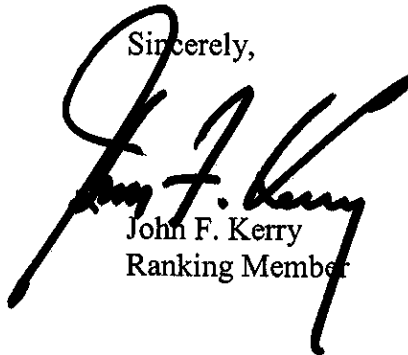
- 1) Approximately eighty-percent of the awards cited in the report that went to businesses that were "other than small" were made through multiple award or Indefinite Delivery Indefinite Quantity (IDIQ) contracts. Small businesses have also pointed to the widespread use of this type of contract as a barrier for small firms to effectively compete for contracts. What leadership role has the SBA taken or will it take to ensure that the growing number of multiple award and IDIQ contracts being let by Federal agencies is not having a deleterious effect on small firms?
- 2) Given that 79 percent of the contracts found to go to companies that are "other than small" were awarded by the Department of Defense or the General Services Administration, how does the SBA plan to increase its oversight of the contracts being awarded by these two agencies?
- 3) What monitoring efforts are being led by the SBA to ensure that companies on the CCR database are not receiving contracts as small businesses that do not qualify for such status?

- 4) In a January 3, 2005, report in the Federal Times, David Drabkin, Deputy Chief Acquisition Officer at GSA claimed that *"no contracts set aside for small business competitions were awarded to large businesses, despite miscoding."* Does the SBA agree with the assertion that no small business contracts that were set-aside for small firms were awarded to firms that were "other than small?" If not, what actions has the SBA taken to set the record straight with GSA and its procurement officials? If so, how does the SBA reconcile Mr. Drabkin's statement with the conclusions made by the Office of Advocacy in its December 28, 2004 report? Were there legitimate small businesses available that were capable of doing the work that was awarded to these 44 firms?
- 5) Given the misrepresentation found in the FY 2002 small business utilization data and the need for a significant increase in oversight of Federal contracting, I request that the SBA perform a complete and independent audit of the FY2003 small business utilization report to be completed and submitted no later than July 1, 2005.

The SBA recently took a positive step in this area by implementing a new policy on December 21, 2004, requiring a small business acquired by another business to certify that the acquired firm remains small enough to qualify for federal contracting preferences. This type of policy change will help prevent misreporting of small business utilization data by reducing the possibility of a small firm being purchased by a larger firm to continue benefiting from small business contracting preferences. While I commend the SBA for this step in the right direction, it is just the first step. The SBA must play a greater, more proactive and more aggressive role with respect to its oversight responsibility. There must be a significant increase in the enforcement of the small business laws and implementation of the accompanying penalties. Without effective oversight and strict enforcement, fraud and abuse will remain a significant and detrimental part of the Federal procurement system.

I look forward to working with you in the 109<sup>th</sup> Congress to end the abuse of the Federal procurement system and ensure that small businesses receive their fair share of the \$250 billion Federal contracts awarded each year.

Sincerely,



John F. Kerry  
Ranking Member