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United States Senate

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

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April 6, 2005

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

Dear Administrator Barreto:

I am very disappointed with your response to my January 25, 2005 letter requesting Small Business Administration (SBA) action to address the growing concerns regarding improprieties in small business Federal contracting.

It is clear that, not only does the law state that it is the duty of the SBA Administrator to ensure that small firms are afforded an opportunity to compete for their fair share of Federal contracts, but it also empowers your office to perform whatever investigations are deemed necessary to enforce this policy.

Section 2(a) of the Small Business Act (15 U.S.C. 632) states, *"It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation."*

Further, section (5)(b)(11) of the Small Business Act (15 U.S.C.634), states that the Administrator may *"make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this Act or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act."*

As the Ranking member of the Senate Committee on Small Business and Entrepreneurship, it is my belief that the SBA must be aggressive in its efforts to address the growing problems in the Federal procurement arena.

Thus, I was dismayed that your letter stated that you "respectfully decline" my request for a full audit of the FY2003 small business utilization data. On March 10, 2005, you testified before the Senate Committee that over \$65 billion in Federal contracts were awarded to small firms. I asked you, given the recent findings that the FY 2002 small business utilization numbers reported by the SBA are overstated, whether you could assert that the FY2003 numbers were accurate. At that time, you were unable to give a clear response. An investigation of the FY2003 utilization number would have provided an answer to that question. Your letter claims that such an investigation falls into the jurisdiction of the General Services Administration (GSA) and the Office of Federal Procurement Policy (OFFP). However, as I noted above, the Small Business Act makes clear that such an investigation is SBA's responsibility. Your refusal to audit the data is an abrogation of the Agency's duty to effectively advocate on behalf of small businesses attempting to do business with the Federal government. I urge you to reconsider this decision.

In response to the concerns raised by the Office of Advocacy report citing that 44 companies listed in the Federal Procurement Center database as small were found to be "other than small," you referenced the implementation of the final rule "*requiring firms to recertify their size status when they novate contracts with the Federal government.*" The re-certification, however, only applies to companies currently considered small that are purchased after December 21, 2004. It does not address the numerous firms that are currently performing on multi-year contracts, some of these contracts are up to 20 years long, but were purchased by large businesses prior to the implementation of this regulation.

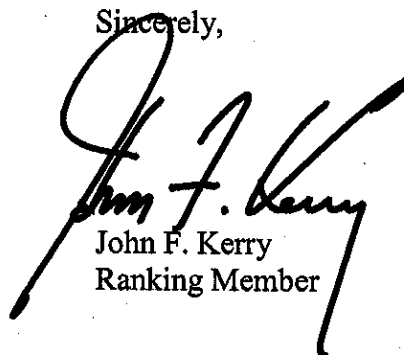
You also referenced the new rule implemented by GSA and OFPP requiring small businesses to recertify their size on schedules and Government Wide Acquisition Contracts at the time of option. On February 24, 2005, the Inspector General of the SBA released a report stating that the "*new requirement still allows a company that outgrows its size standard to continue to qualify as small for up to 5 years.*" Therefore, the new regulation implemented by the GSA and the OFPP does not solve the problem and the government will continue to take credit for contracting to small firms although some of those contracts are being performed by companies that are no longer small.

Finally, you stated that you did not believe that the use of Government Wide Acquisition Contracts, Multiple Award Contracts and Indefinite Delivery Indefinite Quality contracts were "inherently deleterious" to small businesses. I agree. However, I did point out that without proper oversight from the SBA, the widespread use of these procurement tools by Agencies, along with a shrinking competitive marketplace, have had a deleterious affect on small firms.

In order to create an atmosphere in the Federal procurement arena that fosters small business growth and development through opportunities and competition, it is essential that all agencies with jurisdiction over Federal contracts work closely with Congress to ensure that small firms are afforded the maximum practicable opportunity, as required by law. However, the SBA must take a leadership role in all efforts to address the growing

problems in the Federal procurement arena that are preventing small businesses from receiving their fair share of the \$250 billion Federal contracts awarded each year. I hope you will choose to take a more proactive role in investigating the FY2003 and FY2004 small business utilization numbers currently being reported. I look forward to continuing working with you to ensure that the concerns of the small business community are being addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry". The signature is stylized with a large, sweeping initial "J" and "K".

John F. Kerry
Ranking Member